

Merkeson ASCII - 9-27-05

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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 04 Ci v. 9194 (GEL)
5 - - - - - x
6 AMY VELEZ, SONIA KLINGER, PENNI ZELINKOFF,
7 MINEL HIDER TOBERTGA, MICHELLE WILLIAMS,
8 JENNIFER WAXMAN-RECHT, KAREN LIGGINS,
9 LORI HORTON, HOLLY WATERS, STEPHANIE CATES,
10 WENDY PINSON and ROBERTA VON LINTEL,
11 Individually and on Behalf of Others
12 Similarly Situated,
13 Plaintiffs,
14 v.
15 NOVARTIS CORPORATION and NOVARTIS
16 PHARMACEUTICALS CORPORATION,
17 Defendants.
18 - - - - - x

19 CONFIDENTIAL

20 September 27, 2005
21 10:00 a.m.

22 CONFIDENTIAL DEPOSITION OF WAYNE P. MERKELSON, ESQ.
23 taken by Plaintiffs, pursuant to Notice, held at the
24 offices of White & Case, 1155 Avenue of the Americas,
25 New York, New York, before Kathleen Keefe, a
Shorthand Reporter and Notary Public within and for
the State of New York.

Hudson Reporting & Video, Inc.
1-800-310-1769

2

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3 A p p e a r a n c e s:

4 SANFORD, WITTELS & HEISLER, LLP
5 Attorneys for Plaintiffs
6 2121 K Street, NW, Suite 700
7 Washington, DC 20037

8 BY: STEVEN L. WITTELS, ESQ.

9 WHITE & CASE LLP
10 Attorneys for Defendants
11 1155 Avenue of the Americas
12 New York, New York 10036-2727

13 BY: VINCENT R. FITZPATRICK, JR., ESQ.
14 JACK E. PACE, III, ESQ.
15 ALISON R. KIRSHNER, ESQ.

16 VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.
17 Attorneys for Novartis Pharmaceuticals
18 805 Third Avenue
19 New York, New York 10022

20 BY: JONATHAN A. WEXLER, ESQ.

21 NOVARTIS PHARMACEUTICALS CORPORATION
22 One Health Plaza
23 East Hanover, New Jersey 07936-1080

24 BY: ASHLEY MARSH PERTSEMLIDIS, ESQ.

25 ALSO PRESENT: EMILY MAGLIO, SANFORD,
WITTELS & HEISLER

3

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2 STIPULATIONS

3 IT IS HEREBY STIPULATED AND AGREED, by
4 and between the attorneys for the respective parties

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5 hereto, that all objections, except as to form,
6 be reserved to the time of trial.

7 IT IS FURTHER STIPULATED AND AGREED that
8 the sealing and filing of the within deposition are
9 hereby waived.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be subscribed and
12 sworn to by the witness being examined before a
13 Notary Public other than the Notary Public before
14 whom this deposition was begun.

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2 W A Y N E P. M E R K E L S O N, Having been duly
3 sworn by the court reporter, testified on his oath
4 as follows:

5 COURT REPORTER: Would you state
6 your name and address for the record, please?

7 THE WITNESS: Yes. My name is

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8 Wayne Merkel son and my busi ness address is
9 Novarti s Finance Corporati on, 608 Fi fth Avenue,
10 New York, New York 10020.

11 EXAMI NATION

12 BY MR. WITTELS:

13 Q. What's your home address,
14 Mr. Merkel son?

15 A. My home address is the Stewart
16 House, Greenwich Vi llage, New York 10003.

17 Q. Good morn ing. My name is Steven
18 Wittels. I represent the plai nti ffs in thi s
19 action who have brought an action, a lawsui t,
20 against the Novarti s enti ties, Novarti s Corp.
21 and Novarti s -- I'll call them NPC for Novarti s
22 Pharmaceuti cal s today.

23 I'm goi ng to be aski ng you
24 questi ons about the lawsui t. As a lawyer, I
25 know you're well fami liar wi th the ground rules

5

1 Wayne Merkel son - Confi denti al
2 of a deposti ti on. You're under oath. What you
3 say wi ll be taken down by the reporter and can
4 later be used in a courtroom. Do you
5 understand that?

6 A. Yes, si r.

7 Q. You'll answer orally, keep your
8 voice up. Correct? Did you hear the question?

9 A. Was there a questi on?

10 (Record read.)

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11 A. Yes, sir.
12 Q. If you answer, I'll assume you
13 understood the question. If it's not clear,
14 please ask me and I'll try to rephrase it. Is
15 that clear?
16 A. Yes.
17 Q. You're not under any type of
18 impairment today which would affect your
19 ability to think clearly and answer my
20 questions. Correct?
21 A. Correct.
22 Q. Have you ever had your
23 deposition taken before today?
24 A. Yes.
25 Q. Okay. In what context?

6

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2 A. In -- I don't recall specific
3 depositions or specific matters that I've been
4 deposed on, but as general counsel of Novartis
5 Finance, I've been deposed as to our ability to
6 pay, for example, or as to the corporate
7 organization of Novartis Corporation and U.S.
8 group of companies.
9 Q. Just for the record, what's your
10 social security number?
11 MR. FITZPATRICK: I don't think
12 he needs to do that.
13 A. I apologize, but I don't want to

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14 put that in the record. That could become a
15 public database.

16 MR. WITTELS: We can put that
17 under seal.

18 MR. FITZPATRICK: It's not
19 needed.

20 A. I apologize, but I didn't give
21 my home address that specifically and I didn't
22 give my social security number because I'd be
23 concerned that, in today's Internet age and
24 with things on a record in a database, that
25 someone could get access to them and I'd end up

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2 with problems for my credit card, my credit
3 system, everything that I live on. Therefore I
4 apologize, but I won't give it.

5 Q. What's your date of birth?

6 A. April 29th, 1952.

7 Q. Now, how many times have you
8 been deposed before today?

9 A. I was asked that question
10 before, and I can recall two or three times.

11 Q. Do you have a record or
12 recollection of the names of the lawsuits in
13 which you were deposed?

14 A. I don't. I've been deposed in a
15 patent matter or two and an airplane case, the
16 SGI airplane case. Those are the only ones I

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17 can recall.

18 Q. How recent were the patent
19 matters that you were deposed in?

20 A. Within the last ten years.

21 Q. Do you have any record in the
22 office as to the caption of the cases and --

23 A. On the SGI Holdings case, we
24 probably do. And the others, probably not,
25 because we have a record retention system and

8

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2 when cases are closed and a certain number of
3 years go by, we don't keep the records.

4 Q. Was the patent matter a claimed
5 infringement by a Novartis patent?

6 A. Or vice-versa, very likely.

7 Q. Do you recall the result or what
8 the cases were about?

9 A. No, I don't. I gave a
10 deposition, but I generally don't have anything
11 to do with litigation or litigation cases, and
12 I don't follow, believe it or not, outcomes of
13 those kind of cases unless they're material and
14 have to be reported to the SEC or in our annual
15 report, where it's so material that we have to
16 make a reserve or some kind of report.

17 Q. Have you ever personally been
18 involved in a lawsuit?

19 A. No, I haven't.

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20 Q. Have you ever testified at a
21 trial?

22 A. No.

23 Q. Before today's deposition, did
24 you look at any documents to prepare yourself?

25 A. Yes.

9

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2 Q. Which documents?

3 A. I looked at corporate minutes
4 to -- I looked at legal organization charts.

5 Q. Anything else?

6 A. No.

7 Q. The corporate minutes you looked
8 at were for what period?

9 A. During the last five years.

10 Q. So, from 2000 to 2005?

11 A. From 2001 to 2005.

12 Q. And which companies' corporate
13 minutes did you look at?

14 A. I looked at Novartis
15 Corporation, Novartis Services, Inc., and
16 Novartis Finance Corporation.

17 Q. And did you look at the complete
18 minutes? In other words, you had access to
19 review the entire minutes?

20 A. Yes, but I didn't look at the
21 complete minutes. I looked at certain pages of
22 minutes referring to officers or directors.

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23 Q. Okay. But you had the entire
24 minutes in front of you. You could have read
25 any page. Correct?

10

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2 A. I could have.
3 Q. So you looked at minutes,
4 separate -- minutes for three separate
5 entities. Novartis Corporation; is that
6 correct?
7 A. Correct.
8 Q. Novartis Services, Inc., another
9 company. Correct?
10 A. Correct.
11 Q. And Novartis Finance Corp.
12 Correct?
13 A. Yes.
14 Q. You also saw legal organization
15 charts for what company or companies?
16 A. No, no. Legal organization
17 chart is the U.S. affiliated company
18 organization chart, a legal organization chart,
19 and it periodically is updated.
20 Q. And is that one chart, or
21 multiple charts? Did you see periodic updates?
22 A. It is several charts.
23 Q. And for what company was that,
24 what legal organization chart?
25 A. No. I must not be making myself

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2 clear.

3 Q. I'm probably not understanding
4 you. Go on.

5 A. It's the legal organization
6 chart of the U.S. group of companies of
7 Novartis.

8 Q. Okay. Just give me an overview.
9 We'll get into it later. What are the U.S.
10 group of companies for Novartis?

11 A. May I draw them out to help me
12 remember what they are?

13 Q. Sure.

14 A. Thank you. So, there is
15 Novartis Corporation. There is Novartis
16 Finance Corporation.

17 Q. Before you go too much further,
18 I don't like to necessarily interrupt the
19 witness, but is the chart that you are drawing
20 by hand the same as the written produced chart
21 that you've already given us? As far as you
22 know.

23 A. I don't know.

24 Q. Okay.

25 A. I don't know what's been given

12

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2 to you. I'm sorry.

3 Q. Okay. Go ahead. So continue
4 with the chart.

5 A. Novartis Services, Inc.;
6 Novartis Pharmaceuticals Corporation; Gerber
7 Life Insurance Company; Gerber Products
8 Company; Novartis Nutrition Corporation; Ciba
9 Vision Corporation; Novartis Consumer Health,
10 Inc.; Novartis Animal Health U.S., Inc.;
11 Novartis Ophthalmics, Inc.; SyStemix, Inc.
12 Those are the major U.S. affiliates.

13 Q. Could you write on the chart --
14 what would you normally label this document, if
15 you would?

16 A. This would be U.S. corporate
17 organization, major companies.

18 Q. Major companies for? Again, for
19 Novartis what? What entity of Novartis? You
20 wrote the word "Novartis" right at the top.

21 A. "Novartis U.S. Corporations" --

22 Q. Okay.

23 A. -- "Organization, Major
24 Companies."

25 Q. Okay. And -- all right. Would

13

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2 you just date it and just sign or initial that
3 you prepared this?

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4 A. Sure.

5 Q. Okay.

6 MR. WITTELS: Why don't we mark
7 this as Plaintiffs' Exhibit 1?

8 (Plaintiffs' Merkeson Exhibit 1:
9 Marked for identification.)

10 A. Can I add one company?

11 Q. Yeah, of course.

12 A. Sandoz, Inc.

13 Q. Now, this chart that you
14 prepared by hand for us, is this a chart of
15 U.S. corporations that is a document that you
16 would ordinarily prepare in the course of
17 business?

18 A. I don't normally draw it out; I
19 use Visio. And the answer is yes.

20 Q. Who is your current employer?

21 A. The company who pays my salary
22 is Novartis Finance Corporation.

23 Q. What is Novartis Finance
24 Corporation's corporate address?

25 A. 608 Fifth Avenue, New York, New

14

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2 York 10020.

3 Q. How long have you been employed
4 by Novartis Finance Corporation?

5 A. Since the inception of Novartis
6 Finance Corporation at January 1, 1997.

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7 Q. Have you always worked at the
8 Fifth Avenue address?

9 A. Yes.

10 Q. Has Novartis Finance Corporation
11 always been -- had its corporate address at 608
12 Fifth Avenue?

13 A. Yes.

14 Q. Your check then, your paycheck
15 or direct deposit, however you receive it,
16 comes from a company called Novartis Finance.
17 That's who issues it?

18 A. The corporation, when I get my
19 pay stub and my form W-2, says Novartis Finance
20 Corporation on it.

21 Q. Okay. You also mentioned
22 Novartis Services, Inc. Do you work for that
23 company?

24 A. I'm an officer of that company.

25 Q. What is your title for Novartis

15

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2 Services, Inc.?

3 A. I believe it's executive vice
4 president, general counsel and secretary. I
5 was surprised to see executive vice president
6 when I looked back at the minutes.

7 Q. What is your title at Novartis
8 Finance Corporation?

9 A. Vice president, general counsel

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10 and secretary.

11 Q. Do you work for any other
12 companies?

13 MR. FITZPATRICK: Objection as
14 to form.

15 A. I only work for one company that
16 pays my paycheck. I'm an officer of several
17 corporations. I'm an officer as well of
18 Novartis Corporation, vice president and
19 associate general counsel. And there may be
20 some others that I'm an officer; for example,
21 minor companies that aren't on this chart.

22 Q. You would be an officer of?

23 A. I could be an officer of.

24 Q. When you say "could be," who
25 would know if you're an officer of these minor

16

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2 companies?

3 A. I would if I had looked at every
4 record of every minor company. We have -- for
5 example, we have a company called Tapaj, Inc.
6 and I'm an officer of that company. We have a
7 company called the Genomics Institute of the
8 Novartis Research Foundation and I am an
9 officer of that corporation. I believe that's
10 it.

11 Q. What is your title at Tapaj?

12 A. That would be vice president and
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13 secretary.

14 Q. What is your title at the
15 Genomics Institute?

16 A. That would be vice president and
17 secretary.

18 Q. What are the addresses of these
19 two companies?

20 A. The Tapaj address is on Airport
21 Way, Morristown, New Jersey. The address of
22 GNF is on John J. Hopkins Drive in La Jolla,
23 California.

24 Q. Do you have -- sorry. Do you
25 have a CV or some bio that lists all your

17

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2 responsibilities and jobs?

3 A. No, I don't.

4 Q. Do you have any type of CV that
5 lists your past educational background,
6 qualifications, et cetera?

7 A. No. I've worked for this
8 company over 16 years. I haven't had a need to
9 produce a CV.

10 Q. All right. Where did you go to
11 law school?

12 A. I attended Cornell Law School.

13 Q. And you graduated in what year?

14 A. 1975.

15 Q. Where did you go as an

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16 undergrad?

17 A. Cornell University.

18 Q. What did you major in?

19 A. Dual major: Urban studies and
20 government.

21 Q. After law school, what was your
22 first employment?

23 A. I worked at Davies, Hardy, Ives
24 & Lawther for some months, and then at the tax
25 department, Hughes, Hubbard & Reed.

18

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2 Q. How long were you at Hughes
3 Hubbard?

4 A. About three years.

5 Q. What department?

6 A. Tax.

7 Q. And then where did you go?

8 A. Amstar Corporation.

9 Q. Okay. Where were they?

10 A. 1251 Avenue of the Americas, New
11 York, New York 10020.

12 Q. What was your title or titles
13 there?

14 A. Tax counsel.

15 Q. Okay. How long were you at
16 Amstar?

17 A. Nine, almost ten years.

18 Q. Okay. Where did you go after
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19 Amstar?

20 A. Ci ti corp.

21 Q. Here i n New York Ci ty?

22 A. 399 Park Avenue, New York Ci ty.

23 Q. Okay. And what was your ti tle

24 at Ci ti ?

25 A. Vi ce presi dent, tax.

19

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2 Q. How l ong were you at Ci ti ?

3 A. About 20 months.

4 Q. So when you were at Amstar, was

5 i t about '78 to 88? Is that right?

6 A. July '78 to April '87.

7 Q. And Ci ti corp then, you were at

8 ' til about --

9 A. '87 to '89, early '89. And then

10 Sandoz Corporation, the predecessor to Novartis

11 Fi nance Corporati on.

12 Q. You joi ned Sandoz i n what month

13 i n '89?

14 A. April 17th, 1989.

15 Q. What posi ti on did you joi n as?

16 A. Associ ate general counsel .

17 Q. I n any parti cul ar department?

18 A. Law department.

19 Q. Were you doing tax, or were you

20 doing other thi ngs at that poi nt when you

21 started?

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22 A. Mergers and acquisitions.

23 Q. And how long did you remain an

24 associate general counsel for Sandoz?

25 A. Including successorships to

20

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2 Novartis?

3 Q. Before it became Novartis.

4 A. From 1989 to 1996, and I became

5 vice president in 1995, as I recollect.

6 Q. Of Sandoz Corp.?

7 A. Of Sandoz Corporation.

8 Q. Then in 1996, did Sandoz acquire

9 or was it acquired by another company?

10 A. Sandoz Corporation merged with

11 Ciba-Geigy Corporation to become Novartis

12 Corporation effective January 1, 1997. The

13 assets of Sandoz Corporation became Novartis

14 Finance Corporation at January 1, 1997.

15 Q. What was generally the business

16 of Sandoz?

17 A. Sandoz Corporation was a holding

18 corporation, holding the stock and investing in

19 affiliated subsidiary corporations.

20 Q. And what were those affiliated

21 subsidiary corporations doing? What was their

22 general business?

23 A. Sandoz affiliates had a number

24 of businesses in the United States, including

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25 construction chemicals; specialty chemicals;

21

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2 nutrition, foods, including Gerber Products;

3 environmental engineering; pharmaceuticals;

4 agricultural chemicals; seeds.

5 Q. What was your role in the merger
6 of Sandoz and Ciba?

7 A. I am the attorney who prepared
8 and filed, often with assistance of a legal
9 assistant and sometimes with outside counsel,
10 all paperwork to arrange the merger and legal
11 documentation of the merger of Ciba-Geigy
12 Corporation and Sandoz Corporation.

13 Q. Did you do any due diligence
14 prior to the merger on Ciba or its companies?

15 A. No.

16 Q. Are you certified beyond your JD
17 in any tax, or any type of courses?

18 A. Yes.

19 Q. In what?

20 A. I have a master's of law in
21 taxation from New York University in 1978.

22 Q. Do you -- have you written any
23 articles or taught?

24 A. Yes.

25 Q. And where is that?

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2 A. I've taught at Harvard Business
3 School, at Fordham University, at some
4 institutes. And I've written a few articles I
5 cannot recall. You could probably Google them
6 and find out.

7 Q. The teaching you did, was that
8 as a lecturer, or did you actually have full
9 semester courses?

10 A. No, no. As a lecturer.

11 Q. Do you have any other businesses
12 that you're involved in on the side, or are you
13 full time for the Novartis companies as you
14 mentioned?

15 A. Full time for Novartis.

16 Q. After the merger -- strike that.

17 Am I right that simultaneous
18 with the Sandoz/Ciba merger, Novartis
19 Corporation was formed?

20 A. Yes.

21 Q. Where was Novartis Corporation's
22 corporate address --

23 A. Okay.

24 Q. -- as of '97?

25 A. At the merger of Sandoz

23

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2 Corporation into Ciba-Geigy Corporation?

3 Q. Yeah.

4 A. Ciba-Geigy Corporation, which
5 changed its name to Novartis Corporation, was
6 in Tarrytown, New York.

7 Q. Okay. And did this -- the new
8 company, Novartis Corp., then maintain a
9 central office in New York, or somewhere else?

10 A. At January 1, 1997, Novartis
11 Corporation, as I recollect, moved to River
12 Road, Summit, New Jersey.

13 MR. FITZPATRICK: Can I have a
14 second? I think there might be a slight
15 mistake.

16 (Witness and counsel conferring.)

17 MR. FITZPATRICK: Why don't you
18 clarify -- didn't -- Novartis Corporation came
19 into existence at that time or not?

20 THE WITNESS: I think I said
21 that Ciba-Geigy Corporation changed its name to
22 Novartis Corporation at January, 1, 1997.

23 MR. FITZPATRICK: In other
24 words, there was not a new corporation. Right?

25 THE WITNESS: Not a new

24

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2 corporation.

3 A. Effective that date, Novartis
4 Corporation. Ciba-Geigy Corporation had

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5 dropped down its divisional assets to different
6 companies, such as Novartis Agribusiness or --
7 I think it was called Novartis Crop Protection
8 Corporation; Novartis Pharmaceuticals
9 Corporation; Novartis Specialty Chemicals,
10 which actually may have been Ciba Specialty
11 Chemicals.

12 Q. Now, after the merger, when the
13 surviving company became Novartis Corp., you
14 say that they moved corporate headquarters to
15 Summit, New Jersey. Is that right?

16 A. From Tarrytown they moved to
17 Summit, River Road, Summit, New Jersey.

18 Q. And you stayed on in New York at
19 the Fifth Avenue address?

20 A. I worked in 608 Fifth Avenue and
21 sometimes also commuted to Summit, New Jersey.

22 Q. How long --

23 A. Sometimes.

24 Q. How long did Novartis Corp. stay
25 at the River Road address in Summit?

25

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2 A. I believe until year 2002 or
3 maybe 2003, when the campus was sold. It moved
4 to 180 Park Avenue, Florham Park, New Jersey as
5 I recollect in 2002 or 2003.

6 Q. And where is Novartis
7 Corporation's current main business address?

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9 A. At the same location, Building
10 105 at 180 Park Avenue, Florham Park, New
11 Jersey.

12 Q. What other companies, Novartis
13 companies, are also located, their businesses,
14 at 180 Park Avenue, Florham Park?

15 A. Well, you added the words "their
16 businesses" and that's a difficult concept.
17 The -- there is an office of Novartis Services,
18 Inc. at 180 Park Avenue, Florham Park, New
19 Jersey. There is an office, Building 104, at
20 that same site, of Novartis Services, Inc.
21 There is an office of Novartis Pharmaceuticals
22 Corporation in that building at that site.

23 Q. In what building?

24 A. In Building 105 and in Building
25 104 at that site.

Q. How many offices of -- in 2002

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2 or '03 when they moved over there, how many
3 offices were there in Building 105 that
4 Novartis Corp. occupied?

5 A. Out of approximately 200,000
6 square feet, perhaps 3,000 square feet for
7 Novartis Services and Novartis Corporation in
8 Building 105. A small office.

9 Q. How many offices would you say
10 that is, 3,000 square feet?

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11 A. I don't understand the question.

12 Q. I mean, how many rooms.

13 A. Oh, okay. For Novartis
14 Corporation, four rooms. For Novartis Services
15 in Building 105, approximately ten rooms, and
16 some cubbies -- some -- I don't know the right
17 expression for cubby rooms -- without doors and
18 full walls.

19 Q. Now, are you giving current
20 information, or information from 2002/3?

21 A. It's been continuous since they
22 moved in there.

23 Q. So it's been --

24 A. Both companies.

25 Q. The same number of offices?

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2 A. The same number of offices.
3 It's a designated area. It says on the wall,
4 "Novartis Corporation," and "Novartis Services,
5 Inc." right on the wall. And it's separate
6 from the Novartis Pharmaceuticals' oncology
7 division, which also occupies that space.

8 Q. Now, when you mentioned the
9 buildings, you said Novartis Corp. was in 105
10 and Novartis Services was in 104 and 105. Or
11 did I misunderstand that?

12 A. Yes. Novartis Services includes
13 the internal audit department, the security

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14 department, the health, safety and environment
15 department. They are in Building 105. The
16 patent and trademark department is in building
17 104. Corporation includes the insurance
18 department and the tax department in Building
19 105.

20 Q. How many employees of Novartis
21 Corp. have worked at the Florham Park address
22 since approximately 2002?

23 A. Three.

24 Q. What are their names?

25 A. Keith Boudreau, Marianne

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2 Francisco, Marinelli Sullivan.

3 Q. What are their positions?

4 A. Keith is director of tax,
5 Marianne is director of insurance, and Marinelli
6 is their administrative assistant.

7 Q. Have these three employees been
8 employees of Novartis Corp. consistently from
9 2002 to 2003 working at 180 Park Avenue out of
10 Building 105 in Florham Park?

11 A. From the time Novartis
12 Corporation moved from Summit to Florham Park,
13 they have continuously worked there.

14 Q. Do you know which companies
15 these individuals worked for before becoming
16 employees of Novartis Corp.? I mean, were they

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17 with Ci ba, or were they with Sandoz, or you
18 don' t know?

19 A. Okay. They worked in Novartis
20 Corporation in Summi t, New Jersey.

21 Q. Right.

22 A. Keith Boudreau had worked for
23 Sandoz Corporati on. Mari anne Franci sco had
24 worked for Sandoz Pharmaceuti cal s Corporati on
25 in the insurance department. Marinell Sullivan

29

1 Wayne Merkel son - Confi denti al
2 had worked for Ci ba-Geigy Corporati on; I don' t
3 know where.

4 Q. Are there any other Novartis
5 Corporati on employees who work in Florham Park
6 or who have worked in Florham Park since 2002?

7 A. Not to my knowl edge, no.

8 Q. Are there any other Novartis
9 Corporati on employees who have worked or work
10 in any other addresses in New Jersey since
11 2002?

12 A. Not to my knowl edge, no.

13 Q. You say not to your knowl edge.
14 Is there anyone else at Novartis Corp. who
15 woul d have more knowl edge than you about the
16 empl oyees?

17 A. Defi ni tel y not.

18 Q. Why do you say "Defi ni tel y not"?

19 A. The corporate organi zati on is

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20 Novartis Corporation, Novartis Finance
21 Corporation and Novartis Services, Inc. That's
22 what we would call the corporate organization.
23 Sometimes people were put on that chart,
24 Novartis Corporation, but actually it's
25 Novartis corporate organization. And I am the

30

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2 person who designates the company from whom
3 people get their paycheck within those three
4 companies, so I should be the party best able
5 to know which company different people work for
6 within the corporate organization.

7 (Plaintiffs' Merkeson Exhibits 2A
8 and 2B: Marked for identification.)

9 Q. Mr. Merkeson, let me show you
10 what was he marked as Exhibit 2A, which says at
11 the top "Novartis Corporation" and it's got a
12 Bate stamp NCORP 1584. Have you seen this
13 document before today?

14 A. Yes.

15 Q. Is this a document you prepare
16 in the ordinary course of business?

17 A. No, I don't.

18 Q. Who would?

19 A. This is a personnel type
20 organization chart. As I mentioned in the
21 testimony, Novartis Corporation is often
22 designated representing the Novartis corporate

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23 organization, consisting of Novartis
24 Corporation, Novartis Finance Corporation,
25 Novartis Services, Inc., and often the

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2 personnel of the three companies are mixed in
3 these organization charts.
4 Q. Who prepares these charts?
5 A. I believe this is prepared by
6 the human resources department.
7 Q. Of what company?
8 A. Of Novartis Corporation.
9 Q. Look at 2A and 2B. 2A is dated
10 November '04. 2B, which is NCORP 1585, is
11 dated April 2005 and looks essentially the same
12 as the personnel chart. Are these personnel
13 charts documents that you ordinarily see in the
14 course of your duties?
15 A. No.
16 Q. So how do you -- you said that
17 you're the person who would designate where
18 people should get paid from the Novartis
19 Corporation companies. What chart do you refer
20 to, if any, or list so you know where to
21 designate people's pay checks?
22 MR. WEXLER: Objection to form.
23 A. We're a very small company, as
24 you know, of the corporate organization. In
25 total, people in all those companies is about

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2 130 people. And so Novartis Corporation human
3 resources, which actually works for Novartis
4 Finance Corporation, I am their general counsel
5 as Novartis Finance Corporation general
6 counsel. In their role of putting people on to
7 the payroll system, they check with me, an
8 administrative assistant in that department
9 generally. Sometimes a human resources
10 professional will check with me as to which
11 corporation within the corporate group of three
12 companies we designate the employees for
13 payroll and which one they would work for.

14 Q. Do you have a master list that
15 you maintain of all the employees who work for
16 Novartis Corp.? I'll say, of Novartis Corp.,
17 NSI -- which if I say NSI, I'm actually --
18 let's keep it clear.

19 A. I'm sorry. That would confuse
20 me.

21 Q. Strike that question.
22 What are the names that you use
23 in the company for Novartis Corp.? Do you call
24 it Corp? Novartis? What do you call it?

25 A. I'd feel most comfortable

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2 calling it Novartis Corporation.

3 Q. What are -- the other two
4 companies, how do you refer to them?

5 A. Novartis Finance Corporation or
6 Novartis Finance, Novartis Services, Inc. or
7 Novartis Services.

8 Q. Do you have a list at your
9 office of the different employees who work for
10 Novartis Corp., Novartis Services, or Novartis
11 Finance?

12 A. I don't have that list, but
13 human resources would have that list.

14 Q. And has that been an ongoing
15 list that's been maintained since Novartis
16 Corp. was formed back in 1997?

17 A. I wouldn't say there's a formal
18 list the way you're thinking or seem to be
19 implying like there's a list. When someone is
20 listed on the payroll system, if they ask for a
21 printout of who is on which payroll, that's how
22 they get that list. So it's an available list.
23 But human resources should know, yes, which
24 companies the different people work for within
25 the Novartis corporate organization.

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2 Q. And within the -- when you say
3 "within the Novartis corporate organization,"

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4 you're referring to those three companies?

5 A. That is the three companies.

6 Q. Okay. Within those three

7 companies, you can also tell me, or human

8 resources could tell me, from '97 on, who all

9 the employees were on the payroll of the

10 different companies. Correct?

11 A. Yes.

12 Q. Okay. Does human resources at

13 Novartis Corporation or -- strike that.

14 The Novartis HR that you talked

15 about, human resources, is that a part of the

16 Novartis Corp., or one of the other two

17 companies?

18 A. The employees in Novartis human

19 resources work for Novartis Finance

20 Corporation. There are three professionals.

21 Q. Who are they?

22 A. Jim Robinson, William Flannery

23 and Grace Heller.

24 Q. How long have they worked for

25 Novartis Finance Corp. in the HR department?

35

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2 A. Jim Robinson, since January 1,

3 1997. I don't recall the date for Bill

4 Flannery, probably around the same. And Grace

5 Heller is a new employee within the last five

6 years.

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7 Q. Who pays -- strike that.

8 Which company pays these three
9 employees' pay checks?

10 A. The paycheck for those three
11 employees would reflect Novartis Finance
12 Corporation.

13 Q. What is Mr. Flannery's title?

14 A. I don't know.

15 Q. Does he work for Mr. Robinson?

16 A. Yes. He's responsible for
17 compensation and benefits, and I don't recall
18 his title. Jim Robinson's title is vice
19 president, human resources.

20 Q. And Grace Heller's?

21 A. I don't know her title if she
22 has a title. Neither Bill nor Grace are
23 officers of the corporation.

24 Q. What address do these three
25 employees work out of currently?

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2 A. All of them work at 608 Fifth
3 Avenue, New York, New York 10020.

4 Q. How long have they been at 608
5 Fifth Avenue?

6 A. Grace Heller, since she started
7 work. Bill Flannery and Jim Robinson, since
8 they moved to New York from the Summit offices,
9 whenever those Summit offices were sold and

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10 they moved into Manhattan.

11 Q. Is there a document or -- strike
12 that.

13 Is there a chart that you have
14 or that you've seen at the Novartis corporate
15 group that you've talked about with the three
16 companies which lists all the employees and
17 their titles?

18 A. I don't know if titles are
19 listed in any chart. We have a phone -- an
20 internal phone directory. That's about our
21 only chart that I know that lists employees.
22 I'm unfamiliar with charts that maybe HR has
23 produced that might show people's titles like
24 that. I don't know.

25 Q. So the phone directory that you

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2 have, what is that for? Which groups or
3 companies?

4 A. The corporate -- the corporate
5 organization, consisting of Novartis
6 Corporation, Novartis Services and Novartis
7 Finance Corporation, has its own phone list,
8 and it's some pages.

9 Q. And how many employees are
10 currently on it? Did you say roughly 100?

11 A. Approximately 130.

12 Q. Do you also have in that phone

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13 directory, Novartis Pharmaceutical employees?

14 A. No.

15 Q. So when I refer to Novartis

16 Pharmaceuticals, I might say Novartis

17 Pharmaceuticals or NPC. Is that okay?

18 A. I'd prefer Novartis

19 Pharmaceuticals, please.

20 Q. If you wanted to contact a

21 Novartis Pharmaceuticals employee, do you have

22 a phone directory in your office for those

23 employees?

24 A. We used to have a printed phone

25 directory some years ago. I think they went to

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2 a computerized phone directory. So to find an

3 employee, you need to go to an intranet web

4 site of Novartis Pharmaceuticals to find their

5 employees.

6 Q. And you have access to those --

7 to any employee in the Novartis intranet

8 system. Right?

9 A. Well, you must type in --

10 MR. FITZPATRICK: I'm going to

11 object as to form. I don't really understand

12 the question.

13 Q. Did you understand it?

14 A. I can interpret it and answer.

15 Q. Okay. Go ahead.

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16 MR. FITZPATRICK: Just make it
17 clear how you interpret it.

18 THE WITNESS: Okay.

19 A. I'm interpreting that you're
20 asking if I wish to find an employee, can I
21 find an employee.

22 Q. Yes.

23 A. And I was heading to explain
24 that in order to find an employee of a
25 particular company, we must get to their

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2 intranet web site. I actually don't know how
3 personally to do it for most companies. You
4 just have to have the name and type it in. I
5 don't have many occasions to do that.

6 Q. Okay.

7 A. So I don't actually know, you
8 know, specifically. But I know you can get
9 access to the intranet web site and locate an
10 employee by typing their name in once you're on
11 the web site.

12 Q. This web site is a web site that
13 would contain Novartis Pharmaceutical
14 employees, Novartis Corporation employees? How
15 widespread is the web site in terms of
16 employees?

17 A. Oh, no. Each company has their
18 own web site.

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19 Q. Right.

20 A. Some web sites could have a
21 telephone directory that could cover whatever
22 that telephone directory covers. I'm
23 unfamiliar with it.

24 Q. To get into the Novartis
25 Pharmaceuticals web site, do you have to be a

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2 Novartis employee?

3 A. Intranet site, I believe so.

4 Q. So as long as you're one of the
5 members -- an employee of one of the Novartis
6 companies, whether it's your three companies
7 that you mentioned or a different company, you
8 can get access to that intranet?

9 A. That's somewhat difficult. I
10 actually don't believe that some companies'
11 people have access necessarily to other
12 companies' intranet web sites. It's determined
13 by the individual company, which companies they
14 would allow access to their web site, and I
15 don't know actually at any company
16 particularly, what limitations.

17 The reason I know it's not
18 universal is persons at -- someone at Gerber
19 Products Company called me up looking for
20 access to a person at Novartis Pharmaceuticals
21 Corporation and they did not have access. So

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22 they called me up and asked if I can help them
23 find a person at Novartis Pharmaceuticals
24 Corporation. This was in the tax department.

25 Q. Did you find that person?

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2 A. I did find that person.

3 Q. And what resource did you use to
4 find that person?

5 A. I knew how to go to the Novartis
6 Pharmaceuticals intranet web site, and then
7 went to the directory, telephone directory,
8 then punched that person's name in and then got
9 the phone number for this person at Gerber
10 Products.

11 Q. Now, Novartis Finance owns
12 100 percent of the stock of Novartis
13 Pharmaceuticals. Correct?

14 A. That is correct.

15 Q. So am I right that anyone at
16 Novartis Finance can get access to any
17 information for Novartis Pharmaceuticals'
18 employees? Correct?

19 A. Not necessarily, no.

20 Q. Someone who is an officer or has
21 permission from Novartis Finance, in a certain
22 position of authority, would have access to
23 information about Novartis Pharmaceutical
24 employees. Correct?

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25 A. No.

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2 Q. Why not?

3 A. It's up to Novartis

4 Pharmaceuticals Corporation to designate

5 access, and it's not necessarily broadly open.

6 Also, your question is talking broadly about

7 Novartis Pharmaceuticals Corporation, but that

8 corporation is made up of many departments and

9 divisions and each department might have

10 restrictions and access limitations and other

11 security measures to protect data and

12 information. So access to data is not

13 universal, or somehow Novartis Corporation, the

14 corporate organization employees, do not have

15 access to just anything anywhere.

16 Q. Can the president of Novartis

17 Corporation -- that's who? Mr. -- what's his

18 name? Who is the president?

19 A. Terry Barnett.

20 Q. Mr. Barnett, can he access any

21 information he wants about Novartis

22 Pharmaceuticals Corporation?

23 A. Absolutely not.

24 Q. And who has restricted him from

25 accessing information at Novartis

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2 Pharmaceuticals?

3 MR. FITZPATRICK: Objection to
4 form.

5 A. Someone at Novartis
6 Pharmaceuticals Corporation would be the party
7 that needs to grant access, open access.
8 Certainly Mr. Barnett has no access, for
9 example, to development projects or research
10 projects or financial data or anything else
11 that's not generally available to other
12 investors, for example, or the public. We are
13 really very separate corporations, operating
14 quite separately.

15 Q. And are you telling me that if
16 Mr. Barnett wants to get access to certain
17 information at Novartis Pharmaceuticals, he
18 cannot get it, is that what you're telling me,
19 as the 100 percent owner of Novartis
20 Pharmaceuticals?

21 MR. FITZPATRICK: Objection as
22 to form.

23 A. If Mr. Barnett wanted
24 information, he would probably call up the
25 president of Novartis Pharmaceuticals

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2 Corporation and ask for information, and
3 perhaps in hard copy, if he needed something,
4 he would get it as an investor or as a steward
5 of the company, because he's also a member of
6 the board of directors, or perhaps as a service
7 provider, where he provided some type of
8 service.

9 But he wouldn't just -- I mean,
10 do you give access in your law firm to
11 everybody in your firm of every document,
12 everything you do?

13 Q. Are you aware of any instance
14 since you've been working at Novartis Corp.
15 where Mr. Barnett has not been able to access
16 information from its wholly-owned subsidiary,
17 Novartis Pharmaceuticals?

18 MR. FITZPATRICK: Objection as
19 to form. It assumes facts not in evidence.
20 There's no foundation.

21 A. I would not know.

22 Q. Okay. So have you ever
23 discussed with any officer or any employee of
24 Novartis Corporation whether they could not
25 obtain any information from Novartis

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2 Pharmaceuticals that they needed?

3 A. That they needed?

4 Q. Yes.

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5 A. I have assisted obtaining
6 information from Novartis Pharmaceuticals for
7 Novartis corporate organization employees when
8 needed. It is not necessarily generally
9 available, and employees, in fact, don't have
10 general access. So sometimes they have to ask
11 for data and sometimes people answer and
12 sometimes people don't on a timely basis. So
13 occasionally people will call me as their
14 general counsel and say, Look, I'm having
15 trouble getting this data, for example, for a
16 BE -- a form BE-13, government -- Commerce
17 Department data. And people don't respond
18 timely, so I will call up and ask somebody to
19 please respond more timely and indicate why we
20 need the data on that time line.

21 A tax person, Keith Boudreau,
22 may need data from Novartis Pharmaceuticals
23 Corporation's tax department and it may not
24 arrive timely, and he may have called them and
25 said, Please send the data, and it doesn't

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2 arrive timely, so I have occasionally asked.

3 The IT department might have
4 difficulty making systems available to people
5 on a timely basis and I have had occasion to
6 call and say, Please get your system open and
7 operating for us so we can get our data timely

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8 to be able to file our documentation and
9 information on a timely basis. That is a
10 constant struggle, I think, in many large
11 organizations.

12 Q. So was there ever an instance
13 that you're aware of where Novartis Corp.,
14 Novartis Finance or Novartis Services was
15 unable to get information with your assistance
16 from the Novartis Pharmaceuticals when needed?

17 A. Ultimately we get our job done
18 and do get our data, often on a timely basis,
19 not always.

20 Q. What department is shown on
21 Plaintiffs' Exhibit 2A for Novartis
22 Corporation?

23 A. This is the legal, tax and
24 insurance departments.

25 Q. Is there a -- was there a

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2 document that you saw prior to 2004 with these
3 legal, tax and insurance departments?

4 A. I have seen these charts for
5 various years. I'm unfamiliar with them.
6 They're prepared generally with the assistance
7 of the top person listed up here and the HR
8 department. I don't often see these charts.
9 They're internal human resources charts.

10 Q. But as far as you believe, there

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11 would be earlier HR charts for the legal, tax
12 going back to -- from 2004 to 1997. Correct?

13 A. I don't know, but I assume.

14 Q. Now, Martin Henrich is at the
15 head of this chart. How long has he been the
16 general counsel?

17 A. He's not currently the general
18 counsel. He is -- Jeff Benjamin is acting
19 general counsel now.

20 Q. When did -- does Mr. Henrich
21 still work for Novartis?

22 A. Mr. Henrich does not work for
23 Novartis corporate organization any more.

24 Q. What company did he work for
25 when he worked at Novartis?

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2 A. He worked for Novartis Finance
3 Corporation.

4 Q. Any other companies?

5 A. No. He was paid by Novartis
6 Corporation. He may have been an officer of
7 other corporations.

8 Q. What other companies was he an
9 officer of?

10 A. He was an officer, I have listed
11 here, of Novartis Corporation. He was -- he
12 was secretary of Novartis Pharmaceuticals
13 Corporation. He was the director of several

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14 corporations as well.

15 Q. What director -- I mean, what

16 directorships did he hold?

17 A. He was the director of Novartis

18 Services, Inc., I believe Tapaj, Inc.

19 Q. Any other directorships?

20 A. Not that I'm aware of.

21 Q. How long was he a secretary of

22 Novartis Pharmaceuticals or NPC? You called

23 it --

24 A. Approximately five years.

25 Q. From approximately 2000 or -- I

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2 don't know when he left. When did he leave

3 Novartis?

4 A. July -- he just left this

5 summer, I think July or August of this year,

6 and he started in May 2000.

7 Q. Did he work at this New York

8 City Fifth Avenue address?

9 A. Yes.

10 Q. Did he ever work at any other

11 addresses?

12 A. No.

13 Q. How often, as the secretary of

14 Novartis Pharmaceuticals, would he go to

15 Novartis Pharmaceuticals?

16 A. At the most, once or twice a

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17 year.

18 Q. And what office would he go to
19 when he went to Novartis Pharmaceuticals?

20 A. He didn't have an office at
21 Novartis Pharmaceuticals so he would be a
22 visitor. He probably would attend the board
23 meeting there, which is on the top floor of the
24 701 building at Novartis Pharmaceuticals' East
25 Hanover campus. He may visit the general

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2 counsel of Novartis Pharmaceuticals Corporation
3 at the legal department offices in Novartis
4 Pharmaceuticals Corporation.

5 Q. Where is that?

6 A. In East Hanover, on the East
7 Hanover campus in the building next to Building
8 701.

9 Q. Was he continually the secretary
10 of NPC, Novartis Pharmaceuticals, from 2000 to
11 2005?

12 A. Yes.

13 Q. Is there a list that you've seen
14 of the board of directors and the officers for
15 Novartis Pharmaceuticals from 1997 to the
16 present?

17 A. Yes.

18 Q. Who maintains that?

19 A. The secretary of Novartis

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20 Pharmaceuticals Corporation maintained that
21 list. That would be -- Mr. Henrich would have
22 maintained the list and the corporate minute
23 books would reflect that list.
24 Q. And where -- would the corporate
25 minute books and list of directors and officers

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2 be maintained in New York?
3 A. Those minutes would be kept with
4 Mr. Henrich in New York.
5 Q. And who has custody now of the
6 minute books of Novartis Pharmaceuticals?
7 A. That would be Jeffrey Benjamin.
8 MR. FITZPATRICK: Take a break.
9 (A recess was taken from 11:14 a.m.
10 to 11:35 a.m.)
11 (Plaintiffs' Merkeson Exhibits 3A,
12 3B and 3C: Marked for identification.)
13 Q. As a director of Novartis
14 Pharmaceuticals, Mr. Henrich was paid an annual
15 director's fee. Correct?
16 A. Mr. Henrich was never a director
17 of Novartis Pharmaceuticals Corporation.
18 Q. I'm sorry. As the secretary of
19 Novartis Pharmaceuticals, was Mr. Henrich paid
20 a fee for working for Novartis Pharmaceuticals,
21 or compensation?
22 A. Mr. Henrich only received

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23 compensation from Novartis Finance Corporation.
24 You know, Novartis corporate entities are
25 service companies. We perform services for

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2 companies besides being in stewardship, because
3 we have our own shareholder, and for our
4 investments. And so stewardship, investments
5 and services. One of the services rendered is
6 the service of being a corporate secretary.
7 So, in fact, we have compensation between our
8 companies, there's compensation paid between
9 companies, but not to individuals.

10 Q. Novartis -- which Novartis
11 Corporation company was paid by Novartis
12 Pharmaceuticals for Mr. Henrich's services as
13 secretary of Novartis Pharmaceuticals?

14 A. I believe there was no
15 compensation in the case for the corporate
16 secretary function to assist Novartis
17 Pharmaceuticals Corporation. Novartis Finance
18 Corporation, being the parent company and
19 having an investment and being a steward, had
20 assigned Mr. Henrich to act as corporate
21 secretary.

22 Q. Okay. So I -- the company -- in
23 other words, none of the three Novartis
24 corporations, Novartis Corp., Novartis Finance
25 or Novartis Services, was paid by Novartis

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2 Pharmaceuticals for Mr. Henrich's services as
3 secretary of Novartis Pharmaceuticals from 2000
4 to 2005. Is that correct?

5 A. Not directly, that's correct.

6 Q. Okay. Mr. Henrich used his own
7 secretary at Novartis Services to prepare the
8 minutes. Correct?

9 A. I apologize. You seem to be
10 mixing "secretary" as a service function versus
11 administrative assistant or secretary.

12 Q. Let me use that term. He
13 would -- Mr. Henrich would have used his
14 administrative assistant at Novartis Services
15 to prepare the minutes that he maintained at --
16 kept at his New York offices for Novartis
17 Pharmaceuticals from 2000 to 2005. Correct?

18 A. I don't know.

19 Q. Okay. Do you know if
20 Mr. Henrich had an administrative assistant
21 during the years 2000 to 2005?

22 A. Yes.

23 Q. Okay. Did he ordinarily give
24 that person typing, or did he type himself,
25 Mr. Henrich?

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2 A. He typed himself.

3 Q. So he may have maintained the
4 minutes himself. You don't know.

5 A. Correct.

6 Q. Where is Mr. Henrich now? What
7 company does he work for?

8 A. Novartis International AG in
9 Basel, Switzerland.

10 Q. So he moved his office to Basel.
11 Is that correct?

12 A. He now works for Novartis
13 International AG in Basel, Switzerland.

14 Q. As of July '05?

15 A. I believe as of August.

16 Q. Between Novartis International
17 AG and Novartis Corp., there is another
18 intermediary Swiss company. Am I right?

19 A. Can you repeat the question?
20 (The record was read.)

21 A. No.

22 Q. Is Novartis International NAG
23 the parent of Novartis International AG?

24 A. Please repeat the question?

25 MR. FITZPATRICK: You just

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2 got -- I think turned it around. Novartis AG
3 is the parent of Novartis International.

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4 A. Can you repeat the question?
5 Q. Okay. So is Novartis
6 International AG the Swiss company that wholly
7 owns Novartis Corporation?
8 A. No.
9 Q. Okay. What owns Novartis
10 Corporation?
11 A. Novartis Holding AG.
12 Q. And what owns Novartis Holding
13 AG?
14 A. Novartis AG.
15 Q. Not Novartis NAG? Is there a
16 company called Novartis NAG?
17 A. No.
18 Q. Okay. So it's Novartis AG that
19 owns Novartis Holding AG, which in turn owns
20 holds Novartis Corporation.
21 A. Correct.
22 Q. What relationship is there
23 between Novartis International AG, that
24 Mr. Henrich went to work for, and the Novartis
25 Holding AG, if any?

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2 A. They're affiliated companies.
3 Q. Okay. And which companies own
4 Novartis International AG that Mr. Henrich went
5 to work for?
6 A. I believe it's Novartis AG.

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7 Q. Okay. When Mr. Henrich --
8 strike that.

9 Was Mr. Henrich employed or on
10 the board in any type of capacity working for
11 any of the Swiss companies while he worked at
12 Novartis Services and the New York Novartis
13 companies?

14 A. No.

15 Q. Okay. Would Mr. Henrich report
16 to any of the Swiss companies from 2000 to
17 2005? Or any people at the Swiss companies, I
18 should say.

19 A. That's a -- I don't understand
20 that question.

21 Q. Did Mr. Henrich have a
22 supervisor in Switzerland who he reported to
23 about the operations of Novartis Corporation?

24 A. Okay, I'll explain. Novartis
25 Corporation is a holding company that has a

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2 stewardship role and has investment in other
3 companies, as does Novartis Finance
4 Corporation. And Novartis Holding AG has a
5 stewardship and investment role, as does
6 Novartis AG, the publicly-traded company. The
7 chart that you had provided by personnel seems
8 to reflect functions rather than legal entity
9 structure. And Mr. Henrich had an obligation

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10 to report if there are material liabilities,
11 material damages, material costs in legal of
12 Novartis Corporation, to someone at -- in the
13 law department at Novartis International AG.
14 Functionally he would report these types of
15 investment or stewardship matters that relate
16 to SEC, U.S. Securities and Exchange
17 Commission, reporting.

18 MR. WITTELS: Counsel, do you
19 have the minutes of NPC that were maintained by
20 Novartis Corporation at its offices, because I
21 would like to see those.

22 MR. PACE: Well, I think I can
23 answer this.

24 MR. FITZPATRICK: I want to know
25 before you answer it.

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2 (Counsel conferring.)

3 MR. FITZPATRICK: We've got --
4 the client, Novartis Corporation, has in its
5 possession the minutes of Novartis
6 Pharmaceutical Corporation and we produced
7 anything that was called for that related to
8 those minutes. I think it turned out nothing
9 was called for because the minutes were -- the
10 limitation was that the minutes would relate to
11 Corporation and that none of the Pharmaceutical
12 minutes for the period in question related to

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13 Corporation.

14 MR. WITTELS: Okay, Vince. I'd
15 ask to see those, notwithstanding what you've
16 put on the record here, because now we have
17 testimony on the record that the corporate
18 officer of Novartis Finance was also the
19 secretary of the board of directors of Novartis
20 Pharmaceuticals and maintained the minutes in
21 New York and his name would be on the minutes.
22 There's an interrelationship there between this
23 corporate officer who worked for Novartis Corp.
24 and Novartis Pharmaceuticals. So -- I'm
25 entitled to all the minutes, so I'd like to see

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2 them. If there's any relationship, that would
3 have been called for by request number 6. We
4 asked for that.

5 MR. FITZPATRICK: I don't think
6 it's called for and I'll take your request
7 under advisement.

8 MR. WITTELS: I'd ask for that,
9 all the minutes, and unredacted.

10 MR. FITZPATRICK: I'm not going
11 to give you all the minutes unredacted.

12 MR. WITTELS: I think I'm
13 entitled to them.

14 MR. FITZPATRICK: You're not
15 going to get that, so you might as well know

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16 that right now. I'll consider whether I'll
17 give them to you at all.

18 MR. WITTELS: I believe I'm
19 entitled to unredacted minutes, that there's no
20 basis to withhold those.

21 MR. FITZPATRICK: How do you
22 know that? Have you read one? You don't know
23 what's in it. How could you possibly know that
24 you're entitled to unredacted minutes?

25 MR. WITTELS: We'll take it up

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2 at the appropriate time.

3 Q. Bev Schellhammer worked for
4 Mr. Henrich as his administrative assistant.
5 Is that right?

6 A. That's correct.

7 Q. And who does she work for now?
8 If you know.

9 A. She works in New Jersey for Joe
10 Kulak in health, safety and environment.

11 Q. Who is Joe Kulak?

12 A. He's a -- he works in Novartis
13 Services, Inc. as a vice president in health,
14 safety and environment.

15 Q. Who has the list -- strike that.

16 Does Novartis Finance, its HR
17 department, have the list of where all the
18 Novartis Corp., Novartis Finance and Novartis

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19 Services employees are working?

20 A. I explained earlier they can get
21 a list printed from the payroll of which
22 company they work for.

23 Q. And would it also show the
24 location of those employees?

25 A. No.

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2 Q. But if we had the list, you
3 could tell me whether that person was in New
4 York or whether he was in New Jersey. Correct?

5 A. If the person were in New York
6 or New Jersey, yes.

7 MR. WITTELS: Do you have that
8 list, Vince, of the employees for Novartis
9 Corp., so I can see where they're working?

10 MR. FITZPATRICK: There is no
11 such list.

12 MR. WITTELS: There's a payroll
13 list of the different people. Do you have a
14 payroll list?

15 MR. FITZPATRICK: No. I don't
16 think there's even that. He's saying he could
17 generate electronically a list. You could get
18 various lists generated electronically and one
19 is one that would list those people. No such
20 list has been generated.

21 MR. WITTELS: Vince, in order --
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22 Q. In order, Mr. Merkel son, for the
23 company to make its payroll each month, it has
24 a list of employees. It just doesn't invent
25 them each month. Correct?

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2 MR. FITZPATRICK: Of course
3 there's a payroll list.

4 MR. WITTELS: So it's not
5 something they're creating for this litigation.

6 Q. It's something on an ongoing
7 basis, who the employees are?

8 A. Oh, no. It would be
9 electronically held. There's no printed-out
10 list every month, if you're implying there's a
11 printed list.

12 Q. If it's electronic, it can be
13 printed. Correct?

14 A. I would think so.

15 Q. Okay. So there is a list,
16 electronic or that could be printed, of the
17 employees of the Novartis Corporation that's
18 maintained in the ordinary course of business.
19 Correct?

20 A. Absolutel y.

21 Q. Okay.

22 MR. WITTELS: I would like that
23 list, please, Vince, so that I can question
24 this witness and other witnesses about who the

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25 employees are and where they work. I don't

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2 have those lists. Do you have them?

3 MR. FITZPATRICK: They don't
4 exist, so I don't have them. You're asking us
5 to generate them. Whether we'll generate one
6 or not, I'll consider.

7 MR. WITTELS: What do you mean,
8 they don't exist? He just said they exist.

9 MR. FITZPATRICK: I understand.

10 (A recess was taken from 11:52 a.m.
11 to 11:59 a.m.)

12 MR. FITZPATRICK: I learned
13 during the break that there is a list in
14 existence. It's not the one that we've been
15 referring to as a list which is electronic
16 data, but there is a list that's a telephone
17 list that contains all of the names of all of
18 the employees, their telephone numbers and the
19 department they work for. We're having that
20 e-mailed to us.

21 THE WITNESS: I know the
22 companies they work for. Sorry.

23 MR. FITZPATRICK: And they'll
24 come on over soon.

25 MR. WITTELS: Okay.

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2 Q. The question I asked about
3 payroll data over time is an electronic
4 document that is maintained by Novartis
5 Services and indicates who is going to be paid
6 each week for the years '97 to the present.
7 Correct?

8 A. No.

9 Q. Okay. Payroll data is
10 maintained for Novartis Corporation,
11 Novartis -- and Novartis Services and Novartis
12 Finance is maintained by who? HR?

13 A. The payroll department is -- the
14 payroll for the corporations are run as a
15 central service by Novartis Pharmaceuticals
16 Corporation.

17 Q. Okay. So Novartis
18 Pharmaceuticals in New Jersey runs the payroll
19 for Novartis Corporation, Novartis Services and
20 Novartis Finance. Is that correct?

21 A. Novartis Pharmaceuticals
22 Corporation runs the payroll as a central
23 service.

24 Q. Okay. And who is in charge of
25 the payroll department in Novartis

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2 Pharmaceuti cal ?

3 A. I don' t know.

4 Q. Which offi ce do they run the
5 payroll out of?

6 A. I don' t know.

7 Q. Do you know what department
8 would run the payroll?

9 A. The payroll department.

10 Q. Okay. So you don' t know if it's
11 at Florham Park or if it's in East Hanover.
12 Correct?

13 A. I don' t know.

14 Q. Is there some document that
15 would indicate who would know that?

16 A. Is there a document?

17 Q. In other words, if you were
18 trying to access who had that information, who
19 would you ask to see who is running payroll?

20 A. I' d ask Jim Robinson.

21 Q. And has Novartis Pharmaceuticals
22 been running the payroll for the Novartis
23 companies, Novartis Services, Novartis Corp.
24 and Novartis Finance, since 1997?

25 A. I don' t know. Since 2000, yes.

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2 Q. So to get the list of the
3 employees who Novartis Pharmaceuticals is
4 running payroll for to pay the Novartis Corp.,

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5 Services and Finance employees, we'd have to
6 get that list from Novartis Pharmaceuticals.
7 Is that right?

8 A. Yes.

9 Q. Well, doesn't Novartis Corp.
10 know who its own employees are?

11 A. Yes.

12 Q. And where is that list of who
13 its employees are?

14 A. Jim Robinson and his team would
15 have that list.

16 Q. So they have a master list of
17 all Novartis Corp., Novartis Services and
18 Novartis Finance employees. Correct?

19 A. Yes.

20 Q. And they update that and keep
21 that updated on a regular basis. Correct?

22 A. I don't know.

23 MR. WITTELS: Well, before
24 tomorrow, if possible, Vince, I would really
25 like to get the list that Mr. Robinson

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2 maintains of the employees over time so that I
3 can ask him about those employees for the three
4 entities, Novartis Corp., Finance and Services,
5 so I have that in front of me.

6 MR. FITZPATRICK: Yes. If we
7 have it, we will.

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8 MR. WITTELS: Thank you.

9 Q. Now, you said that Mr. Henrich
10 also maintained a list of the board of
11 directors of Novartis Pharmaceuticals in his
12 New York office. Have you seen a list of the
13 Novartis Pharmaceutical board of directors?

14 A. I have. I have seen such lists.

15 Q. And you could walk down -- was
16 Mr. Henrich's office near yours?

17 A. Yes.

18 Q. So you could walk down to his
19 office and say, Hey, Martin, could I see the
20 list of the current directors of Novartis
21 Pharmaceuticals, and he could show it to you.
22 Correct?

23 A. No.

24 Q. Why not?

25 A. We were a service organization,

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2 and in fact the person who keeps these books is
3 a service provider in Novartis Finance
4 Corporation named Lorraine Williams.

5 Q. Who?

6 A. Lorraine Williams actually holds
7 and updates the putting in the papers and
8 keeping those types of records. We don't do
9 that.

10 Q. Who is "we"?

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12 A. Not Martin Henrich nor myself
13 nor Jeff Benjamin nor any other attorney. We
14 have a legal assistant named Lorraine Williams
15 who maintains this documentation.
16 Q. Okay. But she would get --
17 she's getting -- the minutes or the list of the
18 board of directors, she'd get that from
19 Mr. Henrich, who would provide her that
20 information to put into the books. Correct?
21 A. That's correct.
22 MR. WITTELS: Vince, do you have
23 the list of the board of directors for Novartis
24 Pharmaceuticals that's maintained by Novartis
25 Corporation from 1997 to present?
MR. PACE: It's been produced.

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2 MR. WITTELS: Okay.
3 MR. FITZPATRICK: We've got --
4 here, Steve. This is the list.
5 MR. WITTELS: Off the record.
6 (Discussion off the record.)
7 (Plaintiffs' Merkelson Exhibit 5:
8 Marked for identification.)
9 Q. Let me show you Plaintiffs'
10 Exhibit 5, which is a Novartis -- entitled
11 "Novartis Pharmaceuticals Corporation Action by
12 Written Consent of Sole Shareholder," and at
13 the bottom it's signed Robert Thompson, vice

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14 president of Novartis Finance Corp.
15 A. Uh-huh.
16 Q. This document is dated as of --
17 or executed as of September 1, 2000. Could you
18 look at that document? And it's also NPC 1.
19 Have you ever seen this document before?
20 A. Yes.
21 Q. Okay. What is this document?
22 A. This document is an action by
23 written consent of sole shareholder designating
24 the directors -- board of directors of Novartis
25 Pharmaceuticals Corporation.

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2 Q. And the sole shareholder of
3 Novartis Pharmaceuticals Corporation is
4 Novartis Finance Corp., located in New York
5 City. Correct?
6 A. Correct.
7 Q. Am I right that Novartis Finance
8 Corp. is the entity that decides who the
9 shareholders -- excuse me -- who the board of
10 directors of Novartis Pharmaceuticals will be?
11 A. The shareholder elects the board
12 of directors.
13 Q. And who is the shareholder which
14 elects the board of directors?
15 A. The shareholder who elects the
16 board of directors is Novartis Finance

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17 Corporation.

18 Q. And who at Novartis Corporation
19 decided in September of 2000 that the seven
20 names on this list would be the board of
21 directors of Novartis Pharmaceuticals?

22 A. The Novartis Finance Corporation
23 board of directors had designated an officer of
24 Novartis Finance Corporation to take actions
25 for the -- as sole shareholder and investor in

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2 subsidiary companies. Robert L. Thompson at
3 that time was designated as the officer who
4 could take such shareholder actions.

5 Q. Did Mr. Thompson decide by
6 himself as to who the board of directors of
7 Novartis Pharmaceuticals should be?

8 A. No.

9 Q. Who else had input into who the
10 board of directors of Novartis Pharmaceuticals
11 would be as of 2000?

12 A. Members of the board of
13 directors of Novartis Finance Corporation would
14 have input into the designation of directors of
15 other companies.

16 Q. And would there be minutes of
17 Novartis Finance Corporation that would reflect
18 decisions by Novartis -- by Novartis Finance
19 Corporation to elect the -- or to designate and

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20 name the individuals to the Novartis
21 Pharmaceuticals board?
22 A. No.
23 Q. Then what documents would exist
24 that would reflect or refer to decisions by the
25 Novartis Finance Corp. as to who should be on

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2 the Novartis Pharmaceuticals board of
3 directors?
4 A. That would be telephone calls
5 and not done in a documentation. There would
6 be no documentation. That's why Mr. Thompson
7 would be designated as the person to gather
8 that information and take the shareholder
9 actions.
10 Q. Are you saying that you are
11 certain, without any hesitation, that there is
12 absolutely no documentation, no e-mails, no
13 notes, no memos, no letters back and forth
14 between any of the directors or officers of
15 Novartis Finance Corporation with respect to
16 which persons would be named directors of
17 Novartis Pharmaceuticals?

18 MR. FITZPATRICK: Objection as
19 to form.

20 A. No. The answer would be no.

21 Q. You're not certain?

22 A. I don't know what other people

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23 have in their records.
24 Q. Okay. So you're not -- to your
25 knowledge, no one has looked to see if there's

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2 any documents that Novartis Finance Corp. might
3 have, or its personnel, with respect to who
4 would be designated a Novartis Pharmaceutical
5 director?
6 A. I have looked.
7 Q. You personally?
8 A. I personally looked.
9 Q. And whose records did you look
10 in?
11 A. I looked in all Novartis
12 Financial Corporation records of the legal
13 department.
14 Q. Did you look -- not all the
15 people on the Novartis Finance Corporation
16 board are lawyers, are they?
17 A. No.
18 Q. Does Novartis Finance
19 Corporation have its own board of directors?
20 A. Yes.
21 Q. Who is currently on the board of
22 Novartis Finance Corporation?
23 A. Terry Barnett, Urs Naegelin,
24 Raymund Breu.
25 Q. Is there an organization chart

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2 that you've seen for Novartis Finance
3 Corporation?

4 A. No.

5 Q. Is there some HR document like
6 the one we have produced today from HR with
7 respect to the legal, tax and insurance that's
8 similar for the Novartis Finance Corporation?

9 A. As I explained, this chart is
10 including Novartis Finance Corporation.
11 Indeed, this is the legal department that
12 includes Novartis Finance Corporation and
13 Novartis Corporation.

14 Q. Where on this chart, Exhibit 2A,
15 is Terrence Barnett, Raymond Breu and Urs
16 Naegelin?

17 A. They're not members of the
18 legal, tax and insurance department.

19 Q. So are there some separate
20 charts listing the structure and organization
21 of Novartis Finance Corp.?

22 A. I don't know.

23 Q. All right. Could you please,
24 for Novartis Finance Corp., sort of do a
25 similar diagram to what you did here with

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2 respect to -- Exhibit 1, with respect to the
3 personnel, with Mr. Barnett at the top and the
4 major officers below on a chart, please?

5 A. Of Novartis Finance Corporation?

6 Q. Right.

7 A. I keep legal organization
8 charts, and I think it's been explained to you
9 that I don't keep functional personnel charts.
10 But I can produce -- attempt to produce for
11 officers of Novartis Finance Corporation, a
12 chart as to who they are. Yes, I'm prepared to
13 do that.

14 Q. So you have that chart, a legal
15 chart, for Novartis Finance, you have it for
16 Novartis Corp. and for Novartis Services.
17 Correct?

18 A. This is the legal, tax and
19 insurance department of Novartis corporate
20 entities: Novartis Corporation, Novartis
21 Services, Inc. and Novartis Finance
22 Corporation.

23 Q. Okay.

24 A. This is legal, tax and
25 insurance, your chart marked 2A, at

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2 November 2004.

3 Q. But for the officers who are not
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4 mentioned on here, there's a separate chart you
5 said that you maintain.

6 A. I don't maintain.

7 Q. What did you just -- you have
8 legal organization charts for the officers of
9 Novartis Finance. Correct?

10 A. The concept, "legal organization
11 charts," this Exhibit 1 is a legal organization
12 chart. This Exhibit 2A is a functional
13 organization chart. You are mixing legal and
14 functional. I apologize, but I don't
15 understand your question.

16 Q. So there is no chart that you've
17 ever seen with a listing -- well, strike that.

18 Let me show you what we've
19 marked as 3A. Take a look at this. What is
20 3A?

21 MR. WITTELS: 3A is Bate stamped
22 1772 to 1774. That's 3A, 3B and 3C. At the
23 top it says "US Country Organization" with an
24 "S."

25 Q. And the -- directing your

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2 attention to the 3C, which is -- it says on
3 this one, "US & Canada Country Organization,"
4 and at the bottom right, there's a logo that
5 says NOVARTIS. What is this chart?

6 A. This is a functional
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7 organization chart prepared in the human
8 resources department.

9 Q. Of what company?

10 A. Of Novartis Finance Corporation
11 or Novartis Corp. country organization.

12 Q. All right. Mr. Merkelson, which
13 HR department prepared this? You said -- there
14 was an "or" in there.

15 A. Can I answer? There are three
16 people who are professionals in the human
17 resources department of the entire country
18 organization, consisting of Novartis
19 Corporation, Novartis Finance Corporation and
20 Novartis Services, Inc. They work for Novartis
21 Finance Corporation. They are Jim Robinson,
22 Dale Flannery and Grace Heller. There is no
23 one else. There is no multiple human resources
24 organization within the country organization;
25 it is those three professionals. Therefore I

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2 am confused by your question. I apologize.

3 Q. When you call it the "country
4 organization," what does that term mean?

5 A. In functional organization, the
6 country organization consists of personnel of
7 Novartis Corporation, Novartis Finance
8 Corporation and Novartis Services
9 Corporation -- Novartis Services, Inc. These

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10 are service organizations. Novartis Finance
11 Corporation and Novartis Corporation are the
12 investment stewardship holding companies.
13 Novartis Finance Corporation performs services
14 and people in it perform services. Novartis
15 Services performs services, and Novartis
16 Corporation has employees who perform services.

17 Q. Okay. Do you know if, looking
18 back at the list of the board of directors of
19 Novartis Pharmaceuticals, that's Plaintiffs'
20 Exhibit number 5, if this list of the board of
21 directors of Novartis Pharmaceuticals has
22 remained the same from 2000 to 2005?

23 A. Yes.

24 Q. And are there separate lists
25 that are maintained at Novartis Corporation

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2 that show the names of the board of directors
3 year by year after 2000 to the present?

4 A. Lists?

5 Q. Yeah. That is, lists from 2000.
6 Do they have an updated list yearly of the
7 board of directors of Novartis Pharmaceuticals
8 that's maintained at Novartis Corp.?

9 A. I believe Exhibit 5 is the list
10 to which you refer.

11 Q. I'm asking -- this is a list as
12 of 2000. Are there not yearly lists that are

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13 maintained, showing updated --

14 A. Okay.

15 Q. As of 2001, as of 2002, et

16 cetera, showing who the board of directors are

17 on a yearly basis?

18 A. A shareholder action is only

19 necessary when there's a change in the board of

20 directors. We wouldn't necessarily have an

21 updated list. I don't know if we produced one.

22 Q. Okay. Do you know if Bev

23 Schellhammer went to the board of directors'

24 meetings of Novartis Pharmaceutical with

25 Mr. Henrich?

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2 A. She did not.

3 Q. Do you know if any other

4 employees from the Novartis country

5 organization, the three companies you've talked

6 about, Novartis Corp., Novartis Services or

7 Novartis Finance, went to the board of

8 directors' meetings of Novartis Pharmaceutical?

9 A. Yes, there would be two.

10 Q. Who else?

11 A. There would be Terrence Barnett

12 and there would be Urs Naegelin, who are

13 members of that board.

14 Q. Terrence Barnett is the

15 president of and CEO of Novartis Corporation.

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16 Correct?

17 A. That's correct.

18 Q. Also the president and CEO of
19 Novartis Finance. Is that correct?

20 A. No, he's not.

21 Q. Okay. What are his other
22 positions besides being the president and CEO
23 of Novartis Corporation?

24 A. He is a director of many
25 corporations, including Novartis

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2 Pharmaceuticals Corporation. He is president
3 of Novartis Services, Inc. I believe that's
4 it.

5 Q. What is his position, if
6 anything, at Novartis Finance?

7 A. Employee.

8 Q. As what? What title?

9 A. I don't believe he's an officer
10 of the Novartis Finance Corporation.

11 Q. Is there a president of Novartis
12 Finance?

13 A. Yes.

14 Q. Who is that?

15 A. Urs Naegelin is president of
16 Novartis Finance Corporation.

17 Q. Now, you have, again, a legal
18 organization chart for Novartis Finance Corp.

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19 Can you also obtain that and produce that?

20 A. I apologize. You don't appear
21 to understand. This legal organization chart
22 is a legal organization chart.

23 Q. The company's?

24 A. I don't have functional
25 organization charts.

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2 Q. Who -- would HR have the
3 functional organization chart for Novartis
4 Finance?

5 A. If they exist, I would think Jim
6 Robinson would have them.

7 MR. WITTELS: I'd ask again if
8 you can get that beforehand, Vince. It would
9 be a great asset in questioning.

10 MR. FITZPATRICK: I will look at
11 these things and if they're easy to get. But
12 you served discovery, there's been extensive,
13 extensive negotiation over that discovery, and
14 we've fulfilled everything that we agreed to
15 fulfill. So I'm not going to just in general
16 take additional requests. If you've got
17 something that's relatively easy for us to get,
18 as a courtesy I'll get it for you, but you're
19 not going to undertake to fulfill additional,
20 what are now out-of-time discovery requests.

21 MR. WITTELS: A, they're not out
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22 of time, and B, this was called for.

23 MR. PACE: Which request?

24 MR. WITTELS: Obviously a

25 structure of Novartis Finance Corporation would

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2 have been called for.

3 MR. PACE: Do you know which
4 request? Is the -- we can talk during a break
5 if you'd like --

6 MR. WITTELS: Yeah. I don't
7 want to waste time in the deposition, but I
8 think these demands encompass Novartis Finance.

9 MR. FITZPATRICK: We've given a
10 lot of careful thought to what we produced and
11 we've negotiated at great length with your
12 partner about this and we've come to an
13 understanding with her. If we can easily do
14 that, we can easily do it, we will do it. But
15 we're not going to engage in further discovery,
16 I think it is out of time. You have a
17 discovery cutoff.

18 MR. WITTELS: We can take that
19 up. Okay, Vince? But minutes of meetings of
20 the board of directors of Novartis
21 Pharmaceuticals that have the name of the
22 secretary, an employee of Novartis Corporation,
23 country organization employee, is certainly
24 germane and should have been produced.

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25 MR. FITZPATRICK: You're in

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2 negotiations with your own partner. You
3 weren't even there.

4 MR. WITTELS: I know, Vince.
5 That's not something we'd be giving up, so I
6 don't even want to --

7 MR. FITZPATRICK: That's fine.
8 Let's move on. You're the one who is asking
9 for it on the record and persisting in these
10 things. I'm being courteous to you. The
11 discovery period is done.

12 MR. WITTELS: Vince, let's just
13 keep going. Okay? We can argue about these
14 things later.

15 Q. What other companies -- does
16 Terry Barnett work for any of the Swiss
17 companies?

18 A. No.

19 Q. Is Terry Barnett a director or
20 officer of any of the Swiss companies or has he
21 been?

22 A. Ever?

23 Q. Yes.

24 A. I don't know.

25 Q. Who does Terry Barnett report

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2 to?

3 A. The board of directors of
4 Novartis Corporation.

5 Q. And which Swiss company does
6 Mr. Barnett report to?

7 MR. FITZPATRICK: Objection as
8 to form.

9 A. None.

10 Q. Which Swiss executive or officer
11 does Mr. Barnett report to?

12 MR. FITZPATRICK: Objection as
13 to form. Lack of foundation.

14 A. I don't understand the question.

15 Q. Does Mr. Barnett report to any
16 individuals in Switzerland about the operations
17 of the Novartis country organization?

18 A. To my knowledge, no.

19 Q. Who would do reporting from the
20 Novartis country organization to the Swiss
21 companies?

22 A. I don't understand the question.

23 Q. Is there any information flow of
24 the operations of Novartis Corporation,
25 Novartis Finance or Novartis Services to the

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2 Swiss companies?

3 A. Yes.

4 Q. And how does that occur?

5 A. There is reporting for SEC
6 purposes, as I explained earlier, and if we,
7 meaning Mr. Henrich or Mr. Benjamin or myself,
8 obtain information through reporting
9 mechanisms, the stewardship mechanism of
10 reporting, liabilities for example, or cases
11 that might involve amounts in excess of a
12 million dollars, we would report them to a
13 member of the law department of Novartis
14 International AG for reporting, for
15 consolidated Novartis AG SEC reporting.

16 Q. Have there been any board --
17 strike that.

18 Was there any resolution that
19 you know of of Novartis Pharmaceuticals
20 designating Mr. Benjamin as its secretary?

21 A. I don't know.

22 Q. How does one, to your knowledge,
23 become a secretary of the board of directors of
24 Novartis Pharmaceuticals?

25 A. Novartis Finance Corporation, as

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2 sole shareholder, would take an action to
3 appoint -- to recommend the appointment of the
4 secretary to the board of Novartis

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5 Pharmaceuticals Corporation. The board of
6 Novartis Pharmaceuticals Corporation would then
7 elect the secretary.

8 Q. So there would be a document
9 which would show that recommendation or
10 nomination of Mr. Benjamin to the secretary of
11 Novartis Pharmaceutical. Correct?

12 A. Not necessarily a written
13 document. It could be an oral request.

14 Q. And would the -- would there be
15 a recording in the minutes of Novartis
16 Pharmaceutical notating that Mr. Benjamin was
17 nominated and elected as a -- by Novartis
18 Finance Corp. to be a secretary of Novartis
19 Pharmaceuticals?

20 A. If and when that happens, it
21 would be in the minutes.

22 Q. Has it happened?

23 A. No.

24 Q. When is it due to happen?

25 A. I don't know.

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2 Q. Well, are you saying then that
3 Mr. Henrich is currently the secretary, or
4 there is no secretary of Novartis
5 Pharmaceutical?

6 A. I believe Mr. Henrich resigned
7 from being secretary of Novartis

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8 Pharmaceuticals Corporation in July or August
9 and therefore there is no secretary.

10 Q. So would there have been a
11 notation in any minutes of Novartis
12 Pharmaceuticals, to your knowledge, of
13 Mr. Henrich's resignation?

14 A. Yes.

15 Q. Have you seen that?

16 A. No.

17 Q. Do you review minutes of
18 Novartis Pharmaceutical?

19 A. No.

20 Q. What documents, if any, do you
21 review on a regular or irregular basis of
22 Novartis Pharmaceutical?

23 A. Because I was designated to give
24 a deposition here, I looked back at the minutes
25 of Novartis Corporation, which I am not

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2 secretary of and do not have occasion otherwise
3 to look at those minutes. I am secretary of
4 Novartis Finance Corporation and Novartis
5 Services, Inc. and write those minutes and have
6 occasion to look back at what I've written.

7 Q. And you've written those minutes
8 since 1997?

9 A. I've written the minutes of
10 Novartis Finance Corporation since 1997. For

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11 Novartis Services, Inc., later, I believe 2001.

12 Q. And did you review -- did you
13 see any mention in the -- strike that.

14 You did not read all the minutes
15 of Novartis Finance or Novartis Services from
16 '97 to the present, correct, in preparation for
17 this deposition?

18 A. I did read from 2001 forward as
19 designated to me.

20 Q. What do you mean, as designated
21 to you?

22 A. I was asked to review minutes
23 from 2001.

24 Q. Did you read the entire minutes
25 from start to finish of Novartis Finance and

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2 Novartis Services?

3 A. Indeed, I did.

4 Q. Okay. Did you see any
5 references in Novartis Finance or in Novartis
6 Services' minutes to Novartis Pharmaceuticals?

7 A. No, I did not.

8 Q. So the word "Novartis
9 Pharmaceuticals" is never mentioned in any of
10 those minutes, is that what you're saying, from
11 2001 to present?

12 A. In Novartis Services, no. In
13 Novartis Finance. A loan to (sic) Novartis

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14 Finance would be designated and recorded in the
15 minutes of Novartis Finance Corporation, loans
16 would be designated.

17 Q. And what loans are you talking
18 about that were made to Novartis Finance?

19 A. I believe none were during the
20 time period.

21 Q. And what loans are you talking
22 about generally that would be designated in the
23 minutes of Novartis Finance relating to
24 Novartis Pharmaceutical?

25 A. If a loan were made by Novartis

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2 Finance Corporation to Novartis
3 Pharmaceuticals, that would be an instance
4 where Novartis Pharmaceuticals Corporation
5 would appear in the minutes. But as I stated,
6 from 2000 forward I don't believe there were
7 any.

8 Q. Were there loans that you were
9 aware of from '97 to 2000 from Novartis Finance
10 to Novartis Pharmaceuticals?

11 A. I can't recall.

12 Q. Do you think there were?

13 A. Yes.

14 Q. And what were those loans for?

15 A. Loans would be made for
16 operating needs of the corporation.

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17 Q. And were those loans made -- how
18 much were those loans made for, what amount?
19 A. I don't know.
20 Q. Was it more than \$10 million?
21 A. Are you asking me to speculate?
22 Q. No. I'm asking you, to your
23 best recollection, what would approximately be
24 the amount of the loan. Would it be more than
25 10? Less than 10 million?

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2 A. Novartis Finance Corporation
3 making loans to Novartis Pharmaceuticals
4 Corporation would be more than \$10 million.
5 Q. Would it be more than
6 \$50 million?
7 A. It would be more than
8 \$50 million.
9 Q. Are you aware of whether those
10 loans that Novartis Finance made to Novartis
11 Pharmaceuticals have been repaid?
12 A. Loans from Novartis Finance
13 Corporation to Novartis Pharmaceuticals
14 Corporation were assigned some years ago to
15 Novartis Corporation; Novartis Corporation
16 holds loans between Novartis Corporation and
17 Novartis Pharmaceuticals Corporation. The
18 assignment of Novartis Pharmaceuticals' loans
19 from Novartis Finance Corporation to Novartis

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20 Corporation would be in those minutes. And
21 that would be all I would know about. And in
22 Novartis Corporation, there would be loans to
23 Novartis Pharmaceuticals Corporation in excess
24 of \$1 billion. Contributions to capital from
25 Novartis Finance Corporation to Novartis

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2 Pharmaceuticals Corporation would also be in
3 the minutes of Novartis Finance Corporation and
4 those would be also in excess or equal to a
5 billion dollars.

6 Q. Would those -- would the minutes
7 of Novartis Corporation and Novartis Finance
8 Corporation state why those loans were being
9 made?

10 A. No.

11 Q. Would the -- are you aware of
12 whether Novartis Corporation made loans to
13 Novartis Pharmaceuticals from 2000 to the
14 current period?

15 A. Yes.

16 Q. Okay. So who at Novartis
17 Finance decides to make loans to Novartis
18 Pharmaceutical?

19 A. The president and board of
20 directors decide to make loans, generally at
21 the recommendation of the vice president and
22 treasurer of Novartis Finance Corporation.

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23 Q. Who is the vice president and
24 treasurer of Novartis Finance?
25 A. Ken Schuster.

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2 Q. How do you spell his last name?
3 A. S-c-h-u-s-t-e-r.
4 Q. And does Mr. Schuster hold any
5 positions at Novartis Pharmaceuticals?
6 A. No.
7 Q. Has he from 2000 to the present?
8 A. I don't recall.
9 Q. Does the -- would the minutes of
10 Novartis Pharmaceuticals describe why these
11 loans were needed?
12 A. I can't speculate. I don't
13 know.
14 Q. Would there be e-mails or
15 communications back and forth, if you know,
16 between Novartis Finance and/or Novartis Corp.
17 to personnel at Novartis Pharmaceutical about
18 the need for loans from Novartis Corp.?
19 A. I believe phone conversations
20 would be more typical.
21 Q. You're not aware -- no one has
22 looked for documents relating to documents
23 between the two companies, Novartis
24 Pharmaceuticals and the Novartis Corporation
25 group companies. Correct?

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2 A. I don't know.

3 Q. The financial records of

4 Novartis Corp. or the Novartis Corp. group

5 would show loans owing from Novartis

6 Pharmaceuticals. Correct?

7 A. Yes.

8 Q. And Novartis Pharmaceuticals'

9 own financial records would show loans that are

10 owed to Novartis Corp. Correct?

11 A. Correct.

12 Q. And there would be financial

13 notes explaining how much is owed as of certain

14 dates. Correct?

15 A. The loan documentation. There

16 are loans themselves and loan documentation

17 themselves, loan agreements.

18 Q. And who maintains the loan

19 agreements for the Novartis Corp. loans to --

20 well, originally may have been Novartis Finance

21 but later Novartis Corp. loans to Novartis

22 Pharmaceuticals?

23 A. The treasury department

24 maintains the loan documentation as well as

25 myself. I maintain the loan documentation as

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1 Wayne Merkeson - Confidential
2 general counsel of Novartis Finance
3 Corporation.

4 Q. Looking back at the Novartis
5 Corp. personnel chart from November '04, does
6 Jeff Benjamin, who is shown on 2A and 2B, work
7 for any other companies besides --

8 A. I'm sorry. I don't know to what
9 you refer.

10 MR. FITZPATRICK: 2A.

11 Q. This is the legal -- functional
12 chart you said that HR prepares. Correct?

13 A. 2A, Exhibit 2A?

14 Q. 2A and 2B. He's on both. What
15 companies does Jeff Benjamin work for?

16 A. Novartis Finance Corporation, as
17 an employee of.

18 Q. Does he have any other
19 positions?

20 A. At?

21 Q. At any of the Novartis
22 companies, group companies.

23 A. At Novartis Corporation he is
24 vice president and deputy general counsel. He
25 is vice president and assistant secretary of

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2 Novartis Services, Inc. That's it.

3 Q. Does he have any employment
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4 relationship with Novartis Pharmaceuticals?

5 A. No.

6 Q. Has he attended board meetings
7 to your knowledge of Novartis Pharmaceuticals?

8 A. I don't know.

9 Q. Looking back at the chart, the
10 country organization chart, 3C -- do you see
11 that? Right above 2, there are various
12 departments in this organization chart. What
13 are these different departments: public
14 affairs, et cetera, audit?

15 A. There are departments referenced
16 in the chart, yes.

17 Q. What companies are these
18 departments for?

19 A. Okay. Brenda Blanchard, public
20 affairs, is Novartis Services, Inc. Jim Elkin,
21 government relations, is Novartis Services,
22 Inc. Richard Gearhart, corporate intellectual
23 property, Novartis Services Inc. Bob Gines,
24 internal audit, Novartis Services, Inc. Tom
25 Hoxie, corporate intellectual property,

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2 Novartis Services, Inc. Martin Henrich, legal,
3 tax and insurance, Novartis Finance
4 Corporation. Sheldon Jones, public affairs and
5 communications, Novartis Services, Inc. in
6 2003, now works for Novartis Finance

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7 Corporation. Julie Kane, health, safety,
8 environment, Novartis Finance Corporation. Urs
9 Naegelin, finance, treasury investor relations,
10 Novartis Services, Inc. Jim Robinson, human
11 resources, Novartis Finance Corporation. Ross
12 Volk, security, aviation, Novartis Services,
13 Inc. Paul Leger, legal Canada, I don't know
14 why he's on this chart. I guess because it
15 says "Canada Country Organization." I don't
16 know who he works for. I don't really know his
17 function.

18 Q. Now, when you listed these
19 companies, are these the companies, Novartis
20 companies, that pay them, pay these
21 individuals?

22 A. These are their employing
23 companies, correct. They may also be officers
24 of other of the corporate entities. They're
25 not officers to my knowledge, to my direct

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2 knowledge, of any other of the companies on
3 this list, 1, Exhibit 1.

4 MR. FITZPATRICK: You're saying
5 they're not officers of any company other than
6 those that you referred to as belonging to the
7 country organization?

8 THE WITNESS: Correct.

9 Q. So the country organization, as
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10 we've gone over a few times, is made up of
11 Novartis Corp., Novartis Services and Novartis
12 Finance. Correct?

13 A. Correct.

14 Q. And am I right that -- Julie
15 Kane, what is her title currently in the
16 Novartis country organization?

17 A. None. Julie Kane is not in the
18 country organization.

19 Q. What's her title?

20 MR. FITZPATRICK: She's gone
21 now. Right?

22 Q. She left the company?

23 A. She left the corporate
24 organization.

25 Q. When was that?

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2 A. I don't recall.

3 Q. Was it within the last year?

4 A. Within the last two years.

5 Q. So where are the lists for 2004
6 and 2005 for the U.S. and Canada country
7 organization?

8 A. I don't know.

9 MR. WITTELS: Are there such
10 lists?

11 MR. FITZPATRICK: We've given
12 you what we've got.

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13 A. I don't know if they've ever
14 been produced. I don't know.

15 Q. To your knowledge are these
16 lists -- who maintains these? HR?

17 A. These are functional lists
18 maintained by human resources.

19 Q. So I presume human resources has
20 the last two years. Correct?

21 A. I don't know.

22 Q. You would think so?

23 A. I don't know.

24 MR. WITTELS: Do you have them,
25 counsel?

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2 MR. FITZPATRICK: I think if you
3 look at Exhibit 2A --

4 MR. PACE: Our understanding is
5 that the charts, the charts and the files
6 were -- the charts 2A, 2B, 3A, 3B, 3C were the
7 charts covering those years.

8 MR. FITZPATRICK: He's asking,
9 is there a chart that is --

10 MR. WITTELS: I just need a
11 pretty simple answer. Is -- the chart that's
12 listed as 2003, is there a chart like that for
13 2004?

14 MR. PACE: It's my understanding
15 that the chart for 2004 is the one that takes a

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16 slightly different form, which is 2A and 2B.

17 MR. FITZPATRICK: Right.

18 MR. WITTELS: Well, okay.

19 Q. Julie Kane was in what position
20 at NFC?

21 A. When Julie Kane worked for
22 Novartis Finance Corporation, she was a vice
23 president of Novartis Corporation, she was head
24 of health, safety and environment for the
25 country organization, and she was paid by

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2 Novartis Finance Corporation.

3 Q. Did she work for Novartis
4 Pharmaceutical?

5 A. No.

6 Q. Was she not a CEO and chief
7 executive as of July '05 for Novartis
8 Pharmaceuticals?

9 A. CEO and chief executive?

10 Q. Officer. Is there a different
11 Julie M. Kane that's different from Julie Kane?
12 You don't know?

13 A. No, I don't know.

14 Q. Okay. Let me show you --

15 (Plaintiffs' Merkelson Exhibit 6:
16 Marked for identification.)

17 A. I'm ready.

18 Q. Look at what's been marked as
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19 Plaintiffs' Exhibit 6, Merkeson, 6. Have you
20 ever seen this I guess functional organization
21 chart for Novartis Pharmaceuticals as of
22 7/13/2005, NPC 77?

23 A. No.

24 Q. Do you know if it's accurate on
25 this chart when it states that Julie M. Kane is

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2 the CEO, chief executive officer, for Novartis
3 Pharmaceuticals?

4 A. Julie Kane is not the CEO, chief
5 executive officer, of Novartis Pharmaceuticals
6 Corporation. That is Paulo Costa, as shown on
7 that chart.

8 Q. So what is her role, if any, as
9 of July '05 on this chart?

10 A. I don't know.

11 Q. Do you know if this is a
12 mistake?

13 A. I don't know.

14 MR. FITZPATRICK: Since we know
15 it --

16 MR. WITTELS: Why don't you tell
17 us instead of keeping it a surprise.

18 MR. PACE: We understand from
19 Novartis Pharmaceuticals Corporation that those
20 that work in the CEO's office are designated on
21 this chart as CEO. So in other words --

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22 MR. FITZPATRICK: No. They're
23 designated on this chart, as CEO, chief
24 executive office, that's the box, and in that
25 box appears the name of the person who works in

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2 that office. So Julie M. Kane works in the
3 office of the chief executive, who is Paulo
4 Costa.

5 Q. Is this Julie M. the same as the
6 Julie Kane who worked for NFC?

7 A. I don't know.

8 Q. Do you know Julie Kane?

9 A. I do know Julie Kane.

10 Q. Did she used to have an office
11 in New York, or did she have an office in New
12 Jersey?

13 A. Well, this chart in 2005,
14 Exhibit 6, is in 2005.

15 Q. Okay.

16 A. If Julie left Novartis
17 Corporation in 2003 and the Novartis corporate
18 organization, she did then go to work for
19 Novartis Pharmaceuticals Corporation.

20 Q. So there has to be some sort of
21 update to this chart marked as 3C showing who
22 took over health, safety and environment at
23 Novartis?

24 A. Joe Kulak.

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25 Q. And he's not on this exhibit,

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2 Merkeson 2A.

3 A. I don't prepare the HR charts.

4 I'm sorry, I don't know.

5 Q. So, Joe Kulak. And where is Joe
6 Kulak's office again?

7 A. He works for Novartis Services,
8 Inc. He's in Building 105 at 180 Park Avenue,
9 Florham Park, New Jersey, and Bev Schellhammer
10 is his secretary.

11 Q. So do you know if that's where
12 Julie Kane used to work, over at Building 105,
13 190 Park?

14 A. She did not.

15 Q. Where did she work?

16 A. She worked at 608 Fifth Avenue,
17 New York, New York 10020.

18 MR. FITZPATRICK: Are you
19 finished?

20 MR. WITTELS: Why don't we take
21 a break now for lunch?

22 (A recess was taken for lunch from
23 from 12:57 p.m. to 1:57 p.m.)

24 (Plaintiffs' Merkeson Exhibit 4: Marked
25 for identification.)

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2 Q. Mr. Merkeson, I'm going to show
3 you what we've marked as Plaintiffs' Exhibit 4,
4 which is a telephone list with the heading
5 Novartis Corporation, a three-page list that
6 your counsel produced during a break for lunch,
7 and ask if you can identify this document,
8 please.

9 A. I can. This is the Novartis
10 U.S. country organization telephone listing.

11 Q. Okay. Mike Barnes works in New
12 Jersey. Correct?

13 A. That's correct.

14 Q. What office is he in?

15 A. 105 -- Building 105 at 180 Park
16 Avenue. He's in the internal audit department.

17 Q. That's Florham Park. Right?

18 A. That's correct.

19 Q. Now, what does the internal
20 audit department do at Novartis?

21 A. Internal audit is an operational
22 audit function. They perform services at
23 various companies, both for the board of
24 directors for those companies, but often for
25 the companies themselves to actually do

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2 service. And as accountants, they can do
3 forensic accounting, they can try to figure out
4 whether or not the books and records are
5 correct.

6 Basically they work as a normal
7 internal audit function. They look for
8 efficiencies, they look for opportunities to
9 make better efficiency. And therefore they're
10 in Novartis Services and we do charge a service
11 fee for Novartis Services activities, including
12 for this department.

13 Q. Now, Mike Barnes is paid by
14 which Novartis corp.?

15 A. Novartis Services, Inc.

16 Q. Okay. Does Barnes work for any
17 other Novartis country companies?

18 A. No. He's not an officer either.

19 Q. Is he an accountant?

20 A. I don't know.

21 Q. Who supervises Mike Barnes? Is
22 that Bob Gines?

23 A. That would be Bob Gines.

24 Q. Bob Gines works in New Jersey as
25 well?

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1 A. That's correct.

2 Q. Okay. Is he also Florham Park,
3 room 105 or Building 105?
4

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5 A. Yes, sir.

6 Q. And what is Bob Gines' position?

7 A. Bob Gines in Novartis Services,

8 Inc. is in charge of -- in charge of audits,

9 internal audit.

10 Q. Is he an accountant?

11 A. I believe he is.

12 Q. Now, is he doing auditing for

13 Novartis Pharmaceutical?

14 A. No. In this particular

15 instance, no. The internal audit department

16 doesn't audit Novartis Pharmaceuticals. They

17 have their own internal audit department.

18 Q. So what services -- excuse me.

19 What work is Bob Gines and the audit department

20 doing specifically for Novartis

21 Pharmaceuticals?

22 MR. WEXLER: Objection to form.

23 MR. FITZPATRICK: Objection as

24 to form.

25 MR. WEXLER: Lack of foundation.

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2 A. I'm not sure. Honestly, I'm not

3 sure.

4 Q. Does the audit department at

5 Novartis Services perform work for Novartis

6 Pharmaceuticals?

7 A. On request of Novartis

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8 Pharmaceuticals, their internal audit team or
9 their CFO, or their accounting team, the
10 internal audit team at Novartis Services, Inc.
11 could come in for special projects. If, for
12 example, there's not enough staff to do
13 something, they can be asked to come in and
14 help out.

15 Q. What address is the internal
16 Novartis Pharmaceutical audit department?

17 A. Okay. They are located in East
18 Hanover.

19 Q. Who is the head of that, the
20 audit department for Novartis Pharmaceutical?

21 A. I'm sorry, I can't recall. I
22 don't know. I can't recall.

23 Q. So you're saying on special
24 projects or if requested by Novartis
25 Pharmaceutical, NSI, the Novartis Services,

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2 audit department will do work for Novartis
3 Pharmaceutical. Correct?

4 A. Yes. For an arm's length fee,
5 yes, they will.

6 Q. Do they have an ongoing contract
7 in existence to do work so that Novartis
8 Services will do work for Novartis
9 Pharmaceuticals?

10 A. Yes, they do. We have an

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11 operating services agreement between Novartis
12 Services, Inc. and --
13 MR. FITZPATRICK: Take a minute.
14 Let me just ask him something.
15 (Witness and counsel conferring.)
16 A. I'll finish the sentence. There
17 is an operating services agreement between
18 Novartis Services, Inc. and Novartis
19 Pharmaceuticals Corporation.
20 (Plaintiffs' Merkeson Exhibit 7:
21 Marked for identification.)
22 Q. Now, we've marked here
23 Plaintiffs' Exhibit 7, Merkeson, 7, an
24 operating service agreement made as of January
25 '03 between Novartis Services, Inc. and

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2 Novartis Pharmaceuticals. It's NC 1921 to
3 1925. Is this the operating service agreement
4 you were referring to that sets out the work or
5 the agreement between the two companies for
6 work that Novartis Services will do?
7 A. Yes, it is.
8 Q. Was there any operating service
9 agreement or something similar to that prior to
10 January '03 between Novartis country companies
11 and Novartis Pharmaceuticals?
12 A. I believe so.
13 Q. What was that called?

14 A. Merkeson ASCII - 9-27-05
Operating service agreement.

15 Same title.

16 Q. Was there -- the operating
17 service agreement, Plaintiffs' Exhibit 7, page
18 NC 1925, last page, is signed by yourself on
19 behalf of Novartis Services and by who as
20 general counsel on behalf of Novartis
21 Pharmaceuticals?

22 MR. WEXLER: Objection to form.

23 A. I don't understand the question
24 because --

25 MR. WEXLER: General counsel.

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2 A. Yeah. You asked by who.
3 General counsel.

4 Q. Okay. You signed as general
5 counsel for NSI on Exhibit 7. Who signed for
6 Novartis Pharmaceuticals as signatory to the
7 operating service agreement?

8 A. I'm vice president and general
9 counsel of Novartis Services. Any vice
10 president of Novartis Pharmaceuticals might
11 have signed this document. I don't recognize
12 the signature and I don't recall who signed it.

13 Q. Who was the general counsel back
14 in '03 for Novartis Pharmaceutical?

15 A. Dorothy Watson.

16 Q. Who is currently the general

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17 counsel for Novartis Pharmaceutical?
18 A. Dorothy Watson.
19 Q. Is she employed by any other
20 company besides Novartis Pharmaceutical?
21 A. Not to the best of my --
22 employed by any other?
23 Q. Yeah.
24 A. No.
25 Q. Is she on the board of any other

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2 company?
3 A. Not to my knowledge, no.
4 Q. Is she a director of any
5 other --
6 A. Not to my knowledge.
7 Q. Is she on any Swiss companies?
8 Does she work for any of these Swiss Novartis
9 companies?
10 A. No.
11 Q. Is her office in New Jersey?
12 A. Yes.
13 Q. In East Hanover?
14 A. Yup.
15 Q. Why did Novartis Services and
16 Novartis Pharmaceuticals form this agreement?
17 What was the reason for it?
18 A. Every operating company has an
19 operating services agreement with Novartis

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20 Services in order to get services from Novartis
21 Services, Inc.

22 Q. So how many such service
23 agreements does Novartis Services, Inc. have
24 with other Novartis companies?

25 A. One with each major company.

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2 Q. So, looking at Plaintiffs'
3 Exhibit 3, which is the -- strike that.

4 (Plaintiffs' Merkeson Exhibits 8A
5 through 8E: Marked for identification.)

6 Q. Let me show you what's been
7 marked Plaintiffs' Exhibit 8A through 8E.
8 Showing you what's been marked 8 through 8E,
9 all of these documents have different Bate
10 stamps and are entitled Novartis U.S.
11 organization charts.

12 A. Uh-huh.

13 Q. The first one, Bate stamped
14 NCORP 1389, is this a current chart of the
15 Novartis U.S. organization?

16 A. Yes, that's the current
17 organization as of July 27th, 2005, after we
18 acquired Eon Labs, Inc.

19 Q. Who is responsible for preparing
20 this chart?

21 A. Myself, I am.

22 Q. I asked you before if Novartis

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23 had -- Novartis Services had different
24 operating agreements. You said it did with
25 major companies. Could you tell from looking

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2 at this chart which other companies Novartis
3 Services has operating service agreements with?
4 A. Yes.
5 Q. Which companies?
6 A. Gerber Products Company;
7 Novartis Nutrition Corporation; Novartis Animal
8 Health US, Inc.; Ciba Vision Corporation;
9 Novartis Consumer Health, Inc.; Sandoz, Inc.; ,
10 Novartis Ophthalmics, Inc.; Novartis
11 Pharmaceuticals Corporation. And then between
12 Novartis Services within the corporate
13 organization, there's a cross-services
14 agreement.

15 MR. WITTELS: Read back the
16 answer, please.

17 (Record read.)

18 Q. Which company within the
19 Novartis country group is there a
20 cross-services --

21 A. With both Novartis Corporation
22 and Novartis Finance Corporation.

23 Q. Okay. Using the audit people as
24 an example, who are at Novartis Services, Inc.
25 that we've just talked about, Mike Barnes and

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2 Bob Gines, would they be the audit people for
3 NSI who would do work for the other companies
4 you've just mentioned, Sandoz, et cetera?

5 A. Not all. I believe Gerber
6 Products Company has an internal audit team as
7 well. They're a larger company. The smaller
8 corporations don't have an internal audit team.
9 So Novartis Nutrition Corporation, Novartis
10 Animal Health, Ciba Vision Corporation,
11 Novartis Consumer Health, Inc., Sandoz, Inc.,
12 Novartis Ophthalmics, Inc. don't have internal
13 auditors, so they do service more for them.
14 "More." That doesn't mean they wouldn't be
15 called for special projects for any of the
16 companies.

17 Q. So if I wanted to know what work
18 the audit department did from Novartis Services
19 for Novartis Pharmaceuticals during a given
20 year, what would I have to look at?

21 A. I have no idea.

22 Q. Is the -- is Novartis Services
23 paid a flat fee for the year regardless of what
24 work is done, or are they paid depending upon
25 what particular NSI services are done depending

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2 upon whether it's security or audit?

3 A. In fact, I'm the one who
4 determines it and I determine it after speaking
5 to the heads of these departments and asking
6 kind of late in the year, What have you done,
7 What kind of proportionate time have you spent.
8 I find out from the accounting department what
9 the costs and total for the year were, and then
10 I -- in consultation with the treasurer, Ken
11 Schuster, I then prepare and send out billings
12 on a gross number basis. It's not detailed
13 item by item though.

14 Q. So you speak to the heads of the
15 different -- what do you call them, NSI
16 groups or --

17 A. Departments that services
18 functions.

19 Q. So you would talk to Bob Gines
20 and say, Bob, how much time did you spend in
21 2004 on auditing for Pharmaceuticals, and he
22 would tell you what he did, how much money he
23 thinks he spent in terms of his operating
24 costs, how many people were working, et cetera?

25 A. We don't get into that kind of

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2 detail.

3 Q. Tell me then -- give me your
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4 typical discussion with Bob Gines towards the
5 end of the year, what you would ask him and
6 what he told you, say for 2004, so you would
7 know how much to bill Pharmaceuticals.

8 A. I might ask him, What proportion
9 of your time was spent for the various
10 companies, please describe it for me, estimate
11 it for me.

12 Q. Okay. Does he give you an oral,
13 or does it write it down?

14 A. Oral.

15 Q. So you make notes of the five or
16 six companies he does work for, like in a pie
17 chart kind of, and figure out how much to
18 allocate to each of those companies?

19 A. I don't do a pie chart. I do
20 make notes for myself and then pull together
21 department by department, and then sit down
22 with Ken Schuster and determine if the fee is
23 reasonable and then charge out the fee.

24 Q. Have you been this person
25 responsible for that determination and

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2 allocation since Novartis Corp. and Novartis
3 Services started in '97?

4 A. For at least the last five years
5 I've been doing it in that way.

6 Q. Before that, do you know who did
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7 it?

8 A. I did it before as well, but in
9 a different way.

10 Q. How was it different?

11 A. Ken Schuster wasn't working for
12 the corporation, so I might have done it with
13 somebody else, or -- maybe the controller or
14 the CFO. I really, frankly, don't recall the
15 details.

16 Q. So your only conversation to
17 determine how much to bill for is based on
18 talks with the heads of the different
19 departments? Or do you go below the heads and
20 talk to people?

21 A. I get the financial record of
22 what the cost to the department was from the
23 accounting department, from our controller,
24 currently Thomas Luscher, before that other
25 people, or someone who works for him, and on

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2 the basis of that, those numbers, say, Okay,
3 this is what we have to allocate out. And so
4 then talk to the heads of the departments and
5 find out in rough proportion by that department
6 what it should be.

7 Q. In other words -- Thomas
8 Luscher, is that the controller for Novartis
9 Services?

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10 A. That's corporate organization
11 again. He's controller of Novartis Finance
12 Corporation. He works for Novartis Finance
13 Corporation.

14 Q. So he -- does he give you at the
15 end of the year or near the end of the year, a
16 spreadsheet or financial records showing all
17 the costs for the three Novartis country
18 companies? Correct?

19 A. No. I said by departments.
20 Remember, we're a services group of
21 departments.

22 Q. So he'll give you all the
23 different department costs: salary, overhead,
24 travel, all those things?

25 A. I don't get the detail. Just

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2 the total.

3 Q. He'll give you the total, okay.
4 And what form do you get them in? Are they
5 audited financials? Are they --

6 A. No.

7 Q. How do you get them?

8 A. I get --

9 Q. Summary totals?

10 A. -- some type of Excel
11 spreadsheet or sheet from him.

12 Q. Okay.

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13 A. Which I don't retain, by the
14 way.

15 Q. Presumably he keeps them.
16 Right?

17 A. I hope.

18 Q. Okay. So you then have a gross
19 number for the different departments, and then
20 you will talk to Bob Gines, or, picking a name
21 out, Urs Naegelin in the finance, treasury
22 department?

23 A. No, I don't talk to Urs Naegelin
24 about this.

25 Q. Well, using -- let's say using

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2 2003 as an example on Plaintiffs' Exhibit 3C,
3 you had talked to Bob Gines and -- can I pick
4 another person -- Ross Volk, security?

5 A. Yeah, that's a good example.

6 Q. So you would talk to those two
7 people and you'd have their total numbers and
8 costs for that department and then you'd ask
9 them how much work -- Ross, how much work did
10 your people do for Novartis Pharmaceuticals,
11 and he'd tell you. And based on what he told
12 you, you'd then come up with a number with your
13 financial person, Mr. Schuster. Right?

14 A. I discuss with Mr. Schuster as a
15 sanity check to make sure it's reasonable.

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16 Yes, the answer is I work with them. Remember,
17 some functions are stewardship and some
18 functions are services. Some functions are
19 investment service and investment functions.
20 So we only bill out services.

21 Q. So if -- let me understand using
22 an example. If -- Bob Gines, if his costs have
23 been a million dollars for the year in audit,
24 would you then bill out a million dollars to
25 the various companies at which you have

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2 operating service agreements?

3 A. If the operating services cost
4 and not stewardship expenses or investment
5 expenses were a million dollars, yes, that
6 would be billed out.

7 Q. And how would you -- in using
8 the audit, how do you determine what's
9 stewardship versus investment versus services?

10 A. In the conversation I discuss
11 some of the nature of the projects, whether or
12 not it was requested to, for example, look at
13 the -- to look at the -- whether there might
14 have been fraud done in the company or if there
15 had been some other type of financial -- you
16 know, management mistake or something. That
17 would be in the nature of stewardship and that
18 would be a service that we'd render for the

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19 shareholder, which in this case is, you know,
20 Novartis Finance Corporation. So that might be
21 a cost that Novartis Corporation, Novartis
22 Finance Corporation, Novartis Services would
23 bear. That wouldn't be billed to an operating
24 company. That's in the nature of stewardship.
25 Service would be in the nature

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2 of they're looking for better efficiency or
3 whatever. You go in and help them out and look
4 at what they've done and say, Well, you can do
5 it in this streamlined way or this better way
6 or whatever. And that would be a service and
7 it would be charged out as service.

8 Q. Does the audit department have
9 authority to look at the books and records of
10 Novartis Pharmaceutical and say, Look, I need
11 to audit this because there seems to be some
12 question and I want to see if we can better
13 streamline it? Can they make those decisions?

14 A. Operational audits, they can't
15 do. That would be done at the request of the
16 individual companies. Stewardship audits could
17 be done at the request of members of the boards
18 of directors of the companies or, in the
19 alternative, by the shareholder.

20 Q. So if NSI or the Novartis
21 country companies have a question about some of

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22 the financials at Novartis Pharmaceutical, they
23 could authorize an audit to be done by the
24 Novartis -- the NSI audit team. Right?

25 A. Novartis Finance Corporation, a

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2 shareholder, could ask the internal audit
3 department to check on something within the
4 financials and they'd give notice to the
5 finance department and one of these other
6 companies, operating companies, and say, We'll
7 go send our internal auditors to take a look.

8 Q. What records would we need to
9 see to, in fact, learn if Novartis Financial,
10 which -- excuse me -- Novartis Finance or
11 Novartis Services in fact authorized some type
12 of action in a stewardship role of Novartis
13 Pharmaceuticals?

14 A. I don't know. I don't know.

15 Q. Would the board of directors'
16 minutes indicate whether Novartis Services -- I
17 mean by this minutes of Novartis Corporation or
18 of Novartis Services and/or Novartis Finance
19 Corp., state whether one of those three
20 companies' boards authorized actions to be
21 performed at Novartis Pharmaceuticals?

22 A. It doesn't have to be done at a
23 board level. A board member could just put a
24 phone call in. I don't know if there would be

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25 a record of what you're referring to.

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2 (Witness and counsel conferring.)

3 Q. There's another person on page 2
4 of Exhibit 4 of your phone list, Mikus, at the
5 top. Is that another person in the audit
6 department in Florham Park, Building 105?

7 A. Yes. That's another internal
8 auditor working for Bob Gines.

9 Q. Going down a little further,
10 Gyayathri Narayan.

11 A. I don't know this individual,
12 but they would work for Bob Gines. I want to
13 say it's a woman, but I'm not sure.

14 Q. But at Florham Park, Building
15 105?

16 A. Yes. Definitely a Novartis
17 Services, Inc. employee.

18 Q. And then further down, Rajen
19 Sanghani, another audit person at Building 105
20 in Florham Park?

21 A. Yes, or a cubby, one of these
22 workstations. I have a better word,
23 "workstation."

24 Q. Cornelia Stoeckli, another
25 person at Florham Park, 105?

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2 A. I assume a male in the internal
3 audit department.

4 Q. And Cynthia Wieder, another
5 person at Florham Park, Building 105?

6 A. Also Ed Valeriano and Cynthia
7 Wieder.

8 Q. Okay. All of these people in
9 the audit department of Novartis Services work
10 for Bob Gines in New Jersey. Correct?

11 A. Yes.

12 Q. And who do the -- who does Bob
13 Gines report to? Mr. Barnett the president and
14 CEO of Novartis?

15 A. Well, actually I think -- in the
16 case of Bob Gines, although I don't know what
17 our HR charts show, I think in the case of the
18 head of internal audit, there's also a direct
19 reporting line to the board of directors, or
20 there should be, so Mr. Gines would be a report
21 also to the board. However, for -- also I
22 believe operationally he does report to Terry
23 Barnett as president and CEO of the country
24 organization, functional employee.

25 Q. When you said Bob Gines reports

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2 to the board, which board does he report to?

3 A. In the case of Bob Gines, I
4 believe he would report to the Novartis
5 Corporation board as head of internal audit.

6 Q. Are there any audit personnel at
7 Novartis Corp. in New York?

8 A. No. And it's Novartis Finance
9 Corporation in New York.

10 Q. Are there any Novartis corporate
11 employees in the New York office at Fifth
12 Avenue?

13 A. There are officers of Novartis
14 Corporation at 608 Fifth Avenue.

15 Q. Who are they?

16 A. That would include Terry Barnett
17 as president and CEO, Urs Naegelin as executive
18 vice president and CFO, Jim Robinson as vice
19 president of human resources. We're talking in
20 New York. Right?

21 Q. Yeah.

22 A. Before Martin Henrich left, it
23 would have included Martin Henrich. Right now
24 it would include Jeff Benjamin, vice president
25 and acting as general counsel, and Sheldon

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2 Jones as vice president of public affairs and
3 communications. That's everybody in New York.

4 Q. So is this the complete number

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5 of officers who work for the Novartis

6 Corporation in New York?

7 A. Novartis Finance Corporation. A

8 few of them work for Novartis Services, Inc.

9 But they are in New York. I'm referring to the
10 officers who are in New York. And then

11 obviously on this chart you have some officers
12 who are in other offices.

13 Q. How many employees are there
14 total of Novartis Corp. in New York?

15 A. Of Novartis Corporation?

16 Q. Yeah.

17 A. Employees? None.

18 Q. None are in New York?

19 A. No employees are in New York.

20 Officers are in New York. No employees. Not
21 one of the officers who is in New York is an
22 employee of Novartis Corporation.

23 Q. All right. And the officers,
24 the ones you just listed --

25 A. The officers in New York are the

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2 ones I just listed -- I apologize -- and

3 myself. I'm an officer as a vice president and
4 associate general counsel and I am in New York.

5 Q. How many support staff are there
6 in New York City?

7 A. For Novartis Finance Corporation

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8 in New York City?

9 Q. Yeah.

10 A. I don't know. I can't -- I'd
11 have to guess. I'd rather not guess. We could
12 figure it out if we went through the chart item
13 by item.

14 Q. So the 212 numbers on Exhibit 4
15 for the phone listing are the people who work
16 in New York?

17 A. Yes, sir.

18 Q. This listing includes support
19 staff and officers, includes everyone?

20 A. It includes support staff,
21 officers and employees who work in departments
22 which are in New York.

23 Q. Okay. And you also have
24 people -- strike that. Okay.

25 Now, do any of -- the audit

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2 people whose names we just mentioned on
3 Plaintiffs' Exhibit 4, the phone listing, do
4 any of those people work for Novartis
5 Pharmaceuticals?

6 A. No.

7 Q. Are any of them loaned out?
8 Other than providing services as part of NSI,
9 are any of them loaned out to actually work for
10 Novartis Pharmaceuticals?

11 A. Merkeson ASCII - 9-27-05
 Loaned out?

12 Q. Okay.

13 A. No.

14 Q. Do any of the audit staff for
15 NSI report to anyone at Novartis
16 Pharmaceuticals?

17 A. No. There's no report to anyone
18 at Novartis Pharmaceuticals. There is a shared
19 employee, but I don't see her listed here.

20 Q. And who is that?

21 A. Lisa -- I can't remember her
22 last name.

23 Q. And what is her job?

24 A. She works part time in HR. I
25 found her. Lisa Dipaolo in human resources.

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2 She's also a professional in HR and assists
3 with recruiting and interviewing, and she works
4 part time also for Novartis Corporation
5 occasionally.

6 Q. So she is a part-time employee
7 for Novartis Corp. And is she a full-time
8 employee for some other company?

9 A. No. I believe she works part
10 time for Novartis Pharmaceuticals Corporation
11 and she works part time for Novartis
12 Corporation.

13 Q. And how long has she been in

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14 that position?

15 A. Very short time. Less than a
16 year.

17 Q. Was there any employee prior to
18 Ms. Di paolo who worked either part time or full
19 time for both the Novartis country company and
20 Novartis Pharmaceuticals?

21 A. Never before to my knowledge. I
22 was unaware of this until this came up.

23 Q. When did it come up?

24 A. In this -- I had looked at the
25 deposition responses or the interrogatory

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2 responses and saw this. I was unaware of this.

3 Q. Interrogatory response of who?

4 A. I thought that Li sa Di paolo was
5 paid as a service provider and we would pay
6 Novartis Pharmaceuticals Corporation, that she
7 worked full time for Novartis Pharmaceuticals
8 Corporation and we just paid a service. For
9 example, she did some work for me to help me
10 and help me recruit an employee who came to
11 work for me. So I thought she worked for
12 Novartis Pharmaceuticals Corporation, and when
13 this came up, I was informed that she worked
14 part time working for Novartis Corporation. I
15 was unaware of that. I thought it was just a
16 service.

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17 Q. Her office is in New Jersey in
18 Florham Park, or somewhere else?

19 A. In East Hanover. We clearly do
20 not have space for her in New York. She does
21 not have an office in New York.

22 Q. So is she in the HR department
23 of Novartis Pharmaceuticals in East Hanover?

24 A. I believe she is. She's a
25 junior employee who works in recruiting.

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2 Q. And who does she report to?

3 A. I don't know.

4 Q. And what work did she do for you
5 in terms of trying to find an employee for you?

6 A. She assisted in the recruiting
7 effort to try to locate appropriate people and
8 advertise for resumes and the like and
9 interviewing people, to pre-screen and
10 screening that they didn't have any, I don't
11 know, criminal past or other -- you know,
12 anything else that would perhaps interfere with
13 their performance in the job or qualify them
14 for the job. Background check and
15 double-checking they had worked for what they
16 claimed on their resume, things like that.

17 Q. And was Lisa Di Paolo finding you
18 an administrative person, a lawyer, or what
19 type of person?

20 Merkeson ASCII - 9-27-05
20 A. She assisted in a tax lawyer
21 recruitment.
22 (Reporter interrupted.)
23 (A recess was taken from 2:41 p.m.
24 to 2:52 p.m.)
25 Q. Now, when did Ms. Di Paolo start

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2 helping you recruit the tax person?
3 A. Last year.
4 Q. 2004?
5 A. '04.
6 Q. What part of the year?
7 A. Early in the year, like
8 February.
9 Q. How long had she been on board
10 at Novartis Corp.? Do you know?
11 A. I didn't know she was involved,
12 on board at Novartis Corp.
13 Q. Okay. How long had she been
14 working? You thought she was at Novartis
15 Pharmaceutical?
16 A. (Witness nodding.)
17 Q. That's a yes?
18 A. Yes.
19 Q. How long had she been in
20 Novartis Pharmaceutical prior to February of
21 '04?
22 A. I don't know.

23 Merkeson ASCII - 9-27-05
23 Q. Was she there in '03?
24 A. I don't know.
25 Q. Had you ever spoken to her

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2 before February of '04?
3 A. No.
4 Q. How did she come to be assigned
5 to work with you to find a tax person?
6 A. Jim Robinson informed me that
7 she'd help me.
8 Q. So did she report to Jim
9 Robinson? Do you know?
10 A. I don't know.
11 Q. Did you discuss with Ms. Di Paolo
12 what type of a person you would want and what
13 type of person you needed?
14 A. Yes.
15 Q. Did you -- okay. Had you
16 previously worked with people in the HR
17 department at Novartis Pharmaceuticals to get
18 new employees?
19 A. Never.
20 Q. When you thought that she was
21 working for -- what was it that made you assume
22 she had been working for Novartis
23 Pharmaceuticals when she first started working
24 with you?
25 A. Her phone number was a Novartis

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2 Pharmaceuticals' phone number. It still is.

3 Q. 781-8938?

4 A. 973-781-8938.

5 Q. That's a number that rings right
6 into Novartis Pharmaceuticals human resources
7 department?

8 A. I know it's a Novartis
9 Pharmaceuticals Corporation telephone number
10 and extension.

11 Q. What makes it a Novartis
12 Pharmaceuticals number and extension?

13 A. The 973-781. And then the
14 rest -- see, the other -- 973-7812, for
15 example, that is Edgar Butz. That's a Novartis
16 Corporation or Novartis Services, Inc. phone
17 number in that building, 105. That's in
18 Building 105. But her phone number isn't
19 there. It's -- you see not a 2-0, so it's not
20 a 781-2 number. It's a 781-8 number. And I
21 don't know what that is. If you look, the
22 others would be different.

23 Q. Well, what is it -- what other
24 numbers indicate that the number is a Novartis
25 Pharmaceutical number?

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2 A. Hers is the only one. The rest
3 of these are all Novartis Services and Novartis
4 Finance or Novartis' Corporation Washington
5 D.C. office, New York, Building 104, Building
6 105. The 104 numbers, for example in CIP, if
7 you look at CIP, Margaret Hulbert for example,
8 that's in Building 104.

9 Q. At Florham Park?

10 A. In Florham Park.

11 Q. So she, Di paolo, has a 781-89
12 number. Is -- a 781-8 number, does that mean
13 that's it's a Pharmaceutical number?

14 A. No, because CIP -- for example,
15 Richard Gearhart, the head of that department,
16 he is located -- you see 973-781-8089. He is
17 CIP and he's in Building 104. So Lisa has a
18 different set of -- a different number.

19 Q. Are there any other numbers on
20 this from 973 that are Pharmaceutical numbers?
21 Can you look at all the 973 numbers?

22 A. I will look and tell you.

23 No, there are no other
24 Pharmaceutical phone numbers here, none.

25 Q. Now, when -- where was Lisa

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2 Di paolo trained in HR at Novartis? Do you
3 know? Was she trained in the Corp.? Was she

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4 trained at Pharmaceutical?

5 A. I don't know.

6 Q. Do you know what the procedure
7 is for training HR people at the two companies
8 or three companies?

9 A. I don't know.

10 Q. Do you know if Novartis Finance,
11 Novartis Services or Novartis Corp. have an HR
12 training program that's similar or in any way
13 part of the Pharmaceuticals' --

14 A. I don't know.

15 Q. -- HR training?

16 A. I'm sorry. I don't know.

17 Q. Do you know what documents are
18 used when a new employee comes on board at
19 Novartis Corporation and signs on with respect
20 to HR? Do they use Novartis Corporation
21 documents? Do they use Novartis Pharmaceutical
22 documents? Or you don't know?

23 A. I don't know. I haven't done
24 that in 16 years. I'm sorry. I don't know.

25 Q. Do you know what percent of her

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2 time Lisa Di Paolo spends at Novartis Corp.
3 versus Novartis Pharmaceuticals?

4 A. I don't know.

5 Q. Do you know, would Mr. Robinson
6 know that?

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7 MR. FITZPATRICK: Speculating.

8 A. I don't know.

9 Q. Okay. Did Lisa Di Paolo find any
10 other employees for Novartis Corporation that
11 you're aware of?

12 A. She -- I believe she assisted in
13 a secretary search but they didn't hire. She
14 may have assisted in the secretary search where
15 they did hire. I believe she assisted in that,
16 in a secretarial/administrative assistant
17 search for Novartis Finance Corporation.

18 Q. When was that person hired?

19 A. In 2005.

20 Q. What was that person's name who
21 was hired?

22 A. Linda Rubino.

23 Q. R-u-b-i-n-o?

24 A. R-u-b-i-n-o.

25 Q. Can you think of any other

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2 employees who Lisa Di Paolo helped recruit to
3 any of the Novartis country companies?

4 A. Not that I know of.

5 Q. When you give a bill to Novartis
6 Pharmaceuticals for services, do you send a
7 gross bill, or do you itemize or show the
8 allocations for the particular departments that
9 did work at Novartis Finance or finance

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10 services for Novartis Pharmaceuticals?

11 A. It's a gross bill.

12 Q. But you have in your own

13 possession or your accounting person has the

14 breakout of what would be allocated to the

15 different departments, and that comprises the

16 gross bill. Correct?

17 MR. FITZPATRICK: Can we hear

18 that, please?

19 (Record read.)

20 A. I would be responsible -- if a

21 taxing authority were to question the

22 allocation, I'd be responsible to defend it.

23 Q. That wasn't my question though.

24 Do you have a listing or a spreadsheet showing

25 the actual breakout for the different

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2 departments who you billed for on behalf of NSI

3 to Novartis Pharmaceuticals?

4 A. No.

5 Q. Who keeps that?

6 A. I would. I don't have it.

7 Q. What do you do with it?

8 A. I toss it. Once I bill it,

9 that's the bill.

10 Q. So as far as you know though,

11 Mr. Schuster may maintain the breakout, so if

12 there's ever a question as to what each

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13 department did, that would be available.

14 Correct?

15 A. No.

16 Q. Take a look at the operating

17 service agreement, Exhibit 7.

18 A. Uh-huh.

19 Q. And look at -- well, before I

20 ask you the question, am I right that -- am I

21 right that it's the obligation of both NSI,

22 Novartis Services, and Novartis Pharmaceuticals

23 to maintain descriptions of the actual services

24 rendered? Correct?

25 A. That's correct. When I have the

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2 conversation with the department heads, I ask

3 them to keep track of what they did and be

4 prepared to defend it. But the nature of the

5 services that are rendered and the nature of

6 the functions that are done by department are

7 done by that department and they have the

8 obligation to stand forward and defend it later

9 on as to what they did.

10 With respect to the allocation

11 of their costs, we can reconstruct, if we need

12 to, their costs, because when we do that

13 work -- remember, we do it at the end of the

14 year but not when the year is over. But when

15 the year is over, then we have a complete set

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16 of financials and we at that point could prove
17 it, for example, to tax authorities. If
18 Pharmaceuticals, for example, was questioning a
19 bill, they would let us know that they're
20 questioning the bill and we would discuss it
21 and, if necessary, provide details. That has
22 never been necessary.

23 Q. So when -- you say each party
24 keeps the description. So the audit head at
25 NSI, Novartis Services, he'll keep a

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2 description of what he does?

3 A. True.

4 Q. The different -- the head of
5 security will keep a description of what work
6 he did. Is that correct?

7 A. They're expected to.

8 Q. And what's the record retention
9 policy for Novartis country organization?

10 A. For those functions that do
11 services that are billed, specific billed
12 services, they should keep them for five -- I
13 ask them to keep them for five years.

14 Q. Which of the companies on
15 Exhibit 8 that Novartis Services has operating
16 service agreements with does Novartis Services
17 provide the most work for during the year?

18 A. It actually varies. Depends on
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19 the year.

20 Q. In 2004, what was the big --
21 which company did Novartis Services perform the
22 most work for?

23 A. Included in Novartis Services is
24 the airplane and the security services. That's
25 a large expense of the group. It depends on

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2 the -- heavily on the use of the airplane, and
3 so therefore that has a lot of impact on the
4 billing. In a given year it could be any
5 company. In 2004, as I recollect, Novartis
6 Pharmaceuticals Corporation was billed the most
7 for services.

8 Q. What about 2003?

9 A. Actually, it could have been
10 Gerber Products or Novartis Pharmaceuticals.
11 They're both very large companies that get
12 services.

13 Q. What about 2002?

14 A. Some time ago, the ag
15 businesses, crop protection, were very heavy
16 users of airplanes and other services. And so
17 I'd be speculating; I don't recall.

18 Q. Is there -- you have a yearly
19 list of the different amounts billed for all
20 the companies. Correct?

21 A. I don't keep that list. The
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22 bills are sent and then they're recorded.
23 Q. So would Schuster or one of your
24 accounting people have a list of the breakouts
25 of the amounts paid by each of the companies

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2 under the service agreements year by year?
3 A. They should.
4 Q. When you say use of airplanes,
5 what are you talking about?
6 A. Tapaj, Inc. and Novartis
7 Services have airplanes, and so they may, as a
8 service, rent those out to people for use.
9 Q. So Novartis Pharmaceuticals, you
10 said, is a heavy user of airplanes provided by
11 Novartis Services, Inc. to transport their
12 people around?
13 A. Or Tapaj, Inc.
14 Q. Or Tapaj, Inc.?
15 A. Yes.
16 Q. You're talking about instead of
17 taking commercial airlines, you'd pay Novartis
18 Services to transport people for travel around
19 the world for meetings and things like that?
20 Or are you talking about --
21 A. That's a broad question the way
22 you asked it.
23 Q. Does Novartis Services provide
24 airplanes to transport material, or is it only

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25 personnel ?

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2 A. Personnel .

3 Q. When payment is made by Novartis
4 Pharmaceuticals, who do they make payment to
5 under the operating agreement?

6 A. Of course if Novartis Services
7 Inc. bills them, they pay Novartis Services,
8 Inc.

9 Q. And what bank does Novartis
10 Services, Inc. use?

11 A. Novartis Services, Inc., like
12 many other companies, has accounts at Citibank,
13 Citicorp.

14 Q. And what bank does Novartis
15 Corporation use?

16 A. The -- all the corporate
17 entities share the same bank account for
18 receipts and the same bank account for payment.
19 And they would be at different banks; I don't
20 recall the details. But Novartis --

21 Q. Sorry.

22 A. But Citicorp is one of the main
23 banks.

24 Q. So Citicorp is one of the main
25 banks for receipt and for payments of the

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2 Novartis country companies, the three
3 companies. Correct?

4 A. Yes, it is.

5 Q. And what is the main bank for
6 Novartis Pharmaceuticals?

7 A. They may have a New Jersey bank
8 or other lockbox banks or other banks. I don't
9 know. I don't know.

10 Q. Who would know that?

11 A. People at Novartis
12 Pharmaceuticals Corp.

13 Q. When payroll is administered by
14 Novartis Pharmaceuticals for the Novartis
15 country companies, what bank is payroll drawn
16 on?

17 A. I don't know.

18 Q. Is it Citicorp?

19 A. I honestly don't know. It may
20 be. I don't know.

21 Q. When you send out a bill, is it
22 on Novartis Services' -- is it on Novartis
23 Services' letterhead?

24 A. Yes. I'm an officer of Novartis
25 Services and it does go out on Novartis

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2 Services' letterhead or a memo format, billing
3 memo format.

4 Q. Is the logo "Novartis" used on
5 all of the letterheads?

6 A. The Novartis logo for Novartis
7 Services should be on the Novartis Services
8 letterhead, yes.

9 Q. Is that a different logo than
10 Novartis Corp.?

11 A. No.

12 Q. What does the logo look like?

13 A. You said is it different than
14 Novartis Corp. I said no. So it's the same.

15 Q. So what I'm asking is -- why
16 don't you look at Exhibit 2A, which is the
17 legal, tax, insurance document for Novartis
18 Corp.

19 A. Okay.

20 Q. The logo I'm talking about is at
21 the bottom right. Is that the Novartis logo?

22 A. That's the logo in black and
23 white.

24 Q. Is that the same logo that's
25 used on Novartis Pharmaceutical letterhead?

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2 A. Can you show me Novartis
3 Pharmaceuticals' letterhead?

4 MR. FITZPATRICK: If you know.

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6 A. I don't know.

7 Q. Have you seen communications
8 from Novartis Pharmaceuticals to you?

9 A. I assume I have. It's
10 embarrassing to say. I assume so.

11 Q. Okay. Who was it who determined
12 there was a need for Novartis Services to
13 perform the various services for Novartis
14 Pharmaceuticals as opposed to Novartis
15 Pharmaceuticals performing them for themselves
16 or for itself?

17 A. Novartis Pharmaceuticals
18 Corporation of course determines -- it's a very
19 large company with plenty of people. They can
20 do many services themselves. There are some
21 functions where there are specialty people who
22 can do things that they don't choose to staff
23 or to have full-time people doing, or maybe
24 with particular expertise, such as in security
25 or in health, safety and environment, or
26 internal audit specialists. And they don't

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2 choose to staff for it and so we can provide
3 the staff and charge for it.

4 Q. Well, let's -- you mentioned
5 security. The head of security in 2003,
6 according to your document 3C, was Ross Volk.
7 Correct?

8 Merkeson ASCII - 9-27-05
9 A. Yup.

10 Q. Now, Ross Volk's office as the
11 head of security for Novartis Services is in
12 New Jersey at Florham Park. Is that right?

13 A. Ross Volk's current office --
14 and I think it's on the chart here. Exhibit 4
15 reflects I believe his office is in Florham
16 Park, Building 105. I was looking because
17 perhaps he was with the aviation department in
18 the aviation building. If he's not there now,
19 he's expected to move there so that he and the
20 aviation people would be in the same building
21 in Airport Road in Morristown.

22 MR. FITZPATRICK: Before there's
23 any question pending, could I just take a break
24 for a minute?

25 (A recess was taken from 3:15 p.m.
to 3:24 p.m.)

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2 Q. Let me just start you on the
3 first page of Plaintiffs' Exhibit 4 again,
4 which is the Novartis Corp. listing of the
5 employees with their phone numbers. Going down
6 to Greg Buccarelli, what office is -- well,
7 what office is Mr. Buccarelli in, the East
8 Hanover, or the Florham Park?

9 A. Florham Park, Building 105.

10 Q. Mr. Buccarelli is in the finance

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11 department reporting to who?

12 A. He reports to Urs Naegelin.

13 Q. Does he work for NSI?

14 A. He does work for NSI, Novartis
15 Services, Inc.

16 Q. And what jobs does he do for
17 Novartis Pharmaceutical? What did he do in
18 2004? What's he been doing in 2005?

19 A. He actually doesn't. He's in
20 charge of the SOX office; that's the
21 Sarbanes-Oxley work of the corporation, that
22 office. And their work is not charged out.
23 It's stewardship work. It's not charged out to
24 the companies.

25 Q. Okay. Is Edgar Butz also in the

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2 finance department in Florham Park at Building
3 105?

4 A. Yes. He works with
5 Mr. Buccarelli in SOX.

6 Q. Reporting again to Urs Naegelin?

7 A. He reports to Buccarelli.

8 Q. And Urs Naegelin is a board
9 member of Novartis Pharmaceuticals and a board
10 member of Novartis Corporation. Correct?

11 A. Urs Naegelin is not a board
12 member of Novartis Corporation. He's the
13 executive vice president and CFO of Novartis

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14 Corporation. He's president of Novartis
15 Finance Corporation.
16 Q. But he is a board member for
17 Novartis Pharmaceuticals. Correct?
18 A. He's a board member of Novartis
19 Pharmaceuticals.
20 Q. And he has been since 2000.
21 Correct?
22 A. According to the record you
23 showed me, yes.
24 Q. Do companies normally, as far as
25 you know from your corporate and legal

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2 background, try to elect board members who are
3 independent of the company?
4 A. Normally publicly-traded
5 corporations at the publicly-traded level have
6 board members who are independent of the
7 company, the majority. Internal other
8 companies will use the boards as a mechanism to
9 have the stewardship review and to have the
10 investment review also available.
11 Q. So am I right that there are no
12 independent board members at all of Novartis
13 Pharmaceutical from 2000 to the present?
14 A. That is correct.
15 Q. So all of the board members of
16 Novartis Pharmaceutical, starting with the

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17 first one, Thomas Ebeling -- he's the chairman
18 of Novartis AG. Correct?

19 A. No.

20 Q. Thomas Ebeling is -- what are
21 his positions at Novartis Pharmaceutical?

22 A. I'm so sorry. He's chairman of
23 Novartis Pharmaceuticals Corporation. I don't
24 know his other roles, but I believe he had
25 Novartis Pharma AG.

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2 Q. Is there a Novartis
3 Pharmaceuticals European division?

4 A. No.

5 Q. And does -- Novartis
6 Pharmaceuticals, do they -- strike that. Okay.

7 MR. FITZPATRICK: You should
8 elucidate on that first answer. I'm telling
9 you not to volunteer, but you'd better answer.

10 THE WITNESS: In the interest of
11 time.

12 MR. FITZPATRICK: There's no
13 division. There is a corporate entity. So why
14 don't you --

15 THE WITNESS: Novartis Pharma AG
16 is a separate legal entity.

17 Q. Right. Novartis Pharma AG is a
18 separate legal entity which is part of Novartis
19 AG?

20 Merkeson ASCII - 9-27-05
20 A. No. It is a separate legal
21 entity, which means it's not part of Novartis
22 AG. It is a wholly-owned subsidiary of
23 Novartis AG.
24 Q. And who does Reto Brandli work
25 for?

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2 A. Reto Brandli works for Novartis
3 International AG.
4 Q. Is Novartis AG a wholly-owned
5 subsidiary of Novartis AG?
6 A. Please repeat the question.
7 Q. Sorry. Novartis AG wholly owns
8 Novartis International AG. Correct?
9 A. To my knowledge, yes.
10 Q. Raymond Breu, what company does
11 he work for?
12 A. Dr. Breu works for Novartis
13 International AG.
14 Q. Does he sit on the boards of any
15 other companies?
16 A. I'm not familiar in detail to
17 answer.
18 Q. We were given --
19 MR. WITTELS: Let me mark this.
20 (Plaintiffs' Merkeson Exhibit 9:
21 Marked for identification.)
22 Q. Showing you what's been marked

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23 as Plaintiffs' Exhibit 9, a listing at the top,
24 "Novartis Corporation," showing you a listing
25 of election of the board of directors of

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2 Novartis Corporation as of February '02, Bate
3 stamped NCORP 1586 to 1587. Have you seen this
4 document before today?

5 A. Yes.

6 Q. Now, I asked you about Raymond
7 Breu. And by looking at this document, does it
8 refresh you that, in fact, Raymond Breu is both
9 a director of Novartis Pharmaceuticals and a
10 director of Novartis Corporation from 2002 to
11 the present?

12 A. Yes.

13 Q. Is Raymond Breu on the board of
14 directors of any other companies? If you know.

15 A. I don't know.

16 Q. Now, Novartis Holding AG is the
17 company that decided which board members would
18 sit on Novartis Corporation. Correct?

19 A. It's listed as sole shareholder,
20 and so this was a shareholder action.

21 Q. Who is the secretary of Novartis
22 Corporation?

23 MR. FITZPATRICK: Of Novartis
24 Corporation?

25 MR. WITTELS: Correct.

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2 A. I believe there's no -- in 2005,
3 right now, after Martin Henrich resigned, there
4 is no one in that role, has been designated in
5 that role yet. Martin Henrich was, until his
6 resignation, since 2000.

7 Q. He was the secretary of Novartis
8 Corp. and the secretary of Novartis
9 Pharmaceuticals. Correct?

10 A. That's correct.

11 Q. Martin Henrich was. Correct?

12 A. Correct.

13 Q. Was Martin Henrich also the
14 secretary of Novartis Finance?

15 A. No.

16 Q. Who was?

17 A. I was.

18 Q. And are?

19 A. And continue to be.

20 Q. Okay. And who is the secretary
21 of Novartis Services, Inc.?

22 A. I am.

23 Q. And were you in that position
24 from 1997 on?

25 A. No.

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2 Q. When did you start in Novartis
3 as the secretary?

4 A. I believe 2001.

5 Q. Now, do Reto Brandli or Raymond
6 Breu have any offices in New York or New
7 Jersey?

8 A. They do not.

9 Q. Does Terry Barnett have an
10 office in New Jersey?

11 A. He does not.

12 Q. Did he have an office in New
13 Jersey?

14 A. He did not, never has.

15 Q. Does Paulo Costa have any
16 offices besides East Hanover, New Jersey?

17 A. No. Well, I don't know. He
18 works for Novartis Pharmaceuticals Corporation
19 and I don't know.

20 Q. Does he have any other titles
21 other than CEO of Novartis Pharmaceuticals
22 Corporation and being a board member of
23 Novartis Pharmaceutical?

24 A. Well, it was announced in the
25 last week that he's -- effective October 1st,

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2 he's moving from Novartis Pharmaceuticals

3 Corporation, where he will no longer have an

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4 operating role, to become CEO -- president and
5 CEO of Novartis Corporation, replacing
6 Mr. Barnett at October 1st, 2005.

7 Q. Is that considered a promotion?

8 MR. FITZPATRICK: Don't
9 speculate.

10 A. I don't know.

11 Q. I mean, would you consider it an
12 advancement in your career if you were promoted
13 from CEO of Novartis Pharmaceuticals to the CEO
14 of Novartis Corporation?

15 A. I would.

16 Q. Why?

17 A. Why not?

18 Q. No. I'm saying, what about
19 being president of Novartis Corporation would
20 be considered better in terms of job tasks as
21 opposed to Novartis Pharmaceuticals?

22 MR. FITZPATRICK: Let me
23 interject here. This is too far. This is a
24 deposition about corporate separateness. This
25 cannot possibly deal with that subject.

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2 MR. WITTELS: It does deal with
3 it.

4 MR. FITZPATRICK: I'm going to
5 direct him not to answer it.

6 MR. WITTELS: You're not allowed
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7 to.

8 MR. FITZPATRICK: I'm doing it.

9 If you want to take it up in court and explain
10 why you asked this question, do.

11 Q. Who will be replacing Mr. Costa,
12 if you know, as CEO of Novartis
13 Pharmaceuticals?

14 A. Alex Gorsky, the present chief
15 operating officer, will become CEO and
16 president of Novartis Pharmaceuticals
17 Corporation. Mr. Costa will have no operating
18 title or role in Novartis Pharmaceuticals
19 Corporation.

20 Q. Will Mr. Costa remain on the
21 board of Novartis Pharmaceuticals?

22 A. To my knowledge, yes.

23 Q. And will Thomas Ebeling remain
24 the chairman of Novartis Pharmaceuticals'
25 board?

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2 A. Yes.

3 Q. What position is Mr. Barnett
4 going to take? If you know.

5 A. Mr. Barnett will move to Europe
6 and be retiring within a year.

7 Q. Will he be working for any
8 Novartis companies before he retires?

9 A. I don't know.

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10 Q. Will Mr. Costa be working for
11 any of the Swiss companies?

12 A. No.

13 Q. Will he be on the boards of any
14 Swiss companies?

15 A. No.

16 Q. What company -- strike that.
17 Who made the determination that
18 Paolo Costa should be promoted from CEO of
19 Novartis Pharmaceuticals to CEO of Novartis
20 Corporation?

21 MR. FITZPATRICK: Answer it of
22 personal knowledge, please, only personal
23 knowledge.

24 A. I can't answer the question in
25 the form you asked it.

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2 Q. What's wrong with the form?

3 (Record read.)

4 A. These are different jobs, so I
5 don't see it as a promotion. A promotion
6 implies you're in the same company. We have
7 separate legal entities in our group. They are
8 completely separate companies. As you know,
9 there are some members of the board who are the
10 same in the two companies, but otherwise they
11 operate completely separately. Mr. Costa
12 negotiated to have a role in the Novartis

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13 Corporation and presumably has a contract. He
14 negotiated for that contract. It is not a
15 promotion. It is a change of job. Like you
16 and I would go and interview at another law
17 firm or in some other job, or I would interview
18 at some other corporation, so did he.

19 Mr. Barnett reached retirement
20 age and chose to retire. The job was
21 discussed. Mr. Costa presumably asked for it.
22 That's speculation; I'll be speculating here.
23 And they negotiated and he -- with the board,
24 and he wanted the job and he got the job.

25 Q. Are you finished? Are you

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2 finished with your answer?

3 MR. FITZPATRICK: He's finished.

4 A. Yes, sir.

5 MR. WITTELS: Okay. Move to
6 strike that answer as not answering my
7 question, completely nonresponsive.

8 Q. Do you know who -- which people
9 at any of the Novartis companies had any input
10 into the decision that Mr. Costa would become
11 CEO of Novartis Corporation?

12 A. The board of directors of
13 Novartis Corporation, once alerted that
14 Mr. Barnett would be retiring, needed to fill a
15 CEO job. They considered internal and external

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16 candidates and after discussions with
17 Mr. Costa, some representatives of the board of
18 directors determined to hire Mr. Costa in this
19 job.

20 Q. Are there minutes of Novartis
21 Corporation that refer to Mr. Costa being hired
22 as the CEO of Novartis Corporation?

23 A. The next board meeting is in
24 November. I don't believe so.

25 Q. When was the announcement made

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2 by Mr. Barnett that he would be stepping down
3 or wanted to retire?

4 A. After the last board meeting.

5 Q. Which was when?

6 A. In the spring.

7 Q. When you used the words Novartis
8 "considered internal and external candidates,"
9 what's an internal candidate for Novartis?

10 A. An internal candidate for
11 Novartis would be someone who would work for
12 one of the Novartis affiliates. An external
13 candidate would be someone who worked not for a
14 Novartis affiliate.

15 Q. What company does Paul Herrling
16 work for?

17 A. Now you've got me. I apologize,
18 I don't know.

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19 MR. FITZPATRICK: Who are we
20 talking about now?

21 THE WITNESS: Paul Herling.

22 Q. He's at the Basel office. Would
23 it be safe to assume that he's either with
24 Novartis International AG or Novartis AG?

25 MR. FITZPATRICK: Too broad an

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2 assumption.

3 A. I don't know.

4 Q. Now, Urs Naegelin is -- you
5 described his different roles at Novartis
6 Corporation and Novartis Pharmaceutical. Does
7 he have an office at Novartis Pharmaceutical?

8 A. No.

9 Q. Are any of the board members at
10 Novartis Pharmaceutical who are not Novartis
11 Pharmaceutical employees? I guess that would
12 only have been Mr. Costa. Are any of them paid
13 by Novartis Pharmaceuticals or Novartis
14 Corporation for their work as Novartis
15 Pharmaceutical board members?

16 A. No.

17 MR. FITZPATRICK: Were we
18 referring to -- okay. Exhibit 5?

19 Q. Now, what does the health,
20 safety and environment group of the Novartis
21 country companies, Novartis Corp., Novartis

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22 Services and Novartis Finance, do?
23 A. In the country organization,
24 Novartis Services, Novartis Finance, Novartis
25 Corp., they're in Novartis Services. And those

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2 two individuals, I believe Greg Hill and Joe
3 Kulak -- and I believe that's it -- they are
4 expert at regulatory matters relating to
5 environmental, for example, cleanups or spills,
6 OSHA matters or things relating to safety and
7 health conditions.

8 Q. And what work did they do in
9 2005 so far for Novartis Pharmaceutical as part
10 of the health, safety and environment group?

11 A. I don't know.

12 Q. Do you know what health, safety
13 and environment did in 2004 for Novartis
14 Pharmaceutical?

15 A. I believe they assisted in
16 reviewing permits and they -- permit
17 applications for Novartis Pharmaceuticals. I
18 believe they did not do much for
19 Pharmaceuticals in 2004. They worked mostly
20 for other companies.

21 Q. And assist in reviewing
22 environmental permits?

23 A. Environmental permits.

24 Q. Okay. Where are their offices
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25 in New Jersey?

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2 A. They're in 105 in Florham Park.

3 Q. Mark Hennion, is he in Florham
4 Park in security in Building 105?

5 A. Yes. Unless he moved with Ross
6 Volk to the airplane building, yes, he'd be
7 there, likely in a workstation.

8 Q. On the -- looking at the second
9 page of Exhibit 4, the phone listing, going
10 down to tax and insurance, Mr. Todd Onjack.

11 A. Uh-huh.

12 Q. He worked for what individual
13 who headed tax and insurance for Novartis
14 Services?

15 A. He works for me.

16 Q. Okay.

17 A. And he is in tax and -- the
18 legal entity is Novartis Services, Inc.

19 Q. What work does he do for
20 Novartis Pharmaceuticals?

21 A. He prepares the consolidated tax
22 return not for Novartis Services -- yes, for
23 Novartis Services on behalf of Novartis
24 Services, Novartis Finance, Novartis
25 Corporation, the consolidated tax return,

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2 including information from all the operating
3 companies.

4 Q. So he gathers the information
5 from Novartis Pharmaceuticals so that you can
6 prepare the tax return for Novartis country
7 companies?

8 A. No. What happens is, when you
9 have a certain degree of ownership and you're a
10 large corporate group, you file a consolidated
11 tax return. The U.S. consolidated tax return
12 requires pro forma tax returns for each of the
13 companies. He would prepare a pro forma for
14 Novartis Corporation, Novartis Services, Inc.
15 and then Novartis Finance Corporation, and then
16 gather the data, the pro forma returns
17 themselves, from the other companies to make
18 one consolidated tax return.

19 Q. So Novartis Pharmaceuticals does
20 not file its own tax return?

21 A. It's filed through the three
22 Novartis Corporations. The federal income tax
23 return is filed consolidated, but Novartis
24 Pharmaceuticals Corporation has their own tax
25 department and they prepare a pro forma return.

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2 They use that pro forma federal return also to
3 file all their state and local income tax
4 returns. And they also have, of course, many
5 other tax returns that must be filed as an
6 operating company, such as sales and use tax
7 returns, property tax returns and the like.

8 Q. But the federal income tax at
9 the consolidated level for Novartis -- excuse
10 me. Strike that.

11 The taxes that are paid to the
12 federal government by Novartis Pharmaceutical
13 are paid through the consolidated return that
14 Novartis Corporation prepares. Correct?

15 A. No. It doesn't work that way.

16 Q. Okay. Novartis -- Novartis
17 Services prepares a consolidated tax return
18 that includes information from Novartis
19 Pharmaceutical that is paid to the federal
20 government. Correct?

21 A. That's correct.

22 Q. Okay. And Novartis Services
23 bills Novartis Pharmaceuticals for the work
24 that it performs in preparing the consolidated
25 tax return that includes the Novartis

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2 Pharmaceutical information. Correct?

3 A. No. The tax department does not
4 bill for the services, unh-unh.

5 Q. Merkeson ASCII - 9-27-05
6 A. But --
7 A. That's more of a stewardship
8 Q. role.
9 Q. But even though they don't bill
10 for it, Novartis Services is performing that
11 work in preparing a consolidated tax return on
12 behalf of Novartis Pharmaceuticals. Correct?
13 A. No.
14 Q. Well, Novartis Pharmaceutical --
15 is Novartis Pharmaceuticals working with -- is
16 Mr. Onjack an attorney?
17 A. No.
18 Q. Are Novartis Pharmaceutical
19 personnel working with Mr. Onjack to help
20 prepare the consolidated tax return of Novartis
21 Services?
22 A. No.
23 Q. What information does Mr. Onjack
24 gather -- strike that.
25 Does Mr. Onjack gather the pro
 forma returns of Novartis Pharmaceuticals and

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2 then use those to prepare the consolidated tax
3 return for Novartis Services, Inc. and the
4 other Novartis companies?
5 A. Yes.
6 Q. Is Mr. Onjack at the Florham
7 Park 105 building?

8 Merkeson ASCII - 9-27-05
9 A. Yes, he is.

10 Q. Where is Ms. Kelly Parlapiano
11 who works for security for NSI, what building?

12 A. Like Mark Hennion, she's either
13 still in 105 or will have moved to the airport
14 building.

15 Q. Is Mr. Greg Phillips in finance
16 in Florham Park?

17 A. Greg Phillips is the third of the
18 SOX team and sits with Mr. Buccarelli and
19 Mr. Butz. He's in Building 105.

20 Q. Where is Adrian Roman in
21 security?

22 A. Adrian Roman in security works
23 in Florida.

24 Q. What company does he work for?

25 A. Novartis Services, Inc.

 Q. Does he do any work for Novartis

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2 Pharmaceuticals?

3 A. Absolutely not.

4 Q. Now, Bev Schellhammer, who we
5 spoke about before, is she in Florham Park?

6 A. Yes. She works for Joe Kulak in
7 Building 105 at Florham Park.

8 Q. And Borden Schofield?

9 A. Borden Schofield is the head of
10 aviation and he's at 9 Airport Road in

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11 Morristown, New Jersey.

12 Q. And that is the aviation that,
13 again, we talked about earlier, providing
14 planes to Novartis Pharmaceuticals if they need
15 them. Correct?

16 A. That's correct. He works for
17 Ross Volk.

18 Q. Now, how many square feet is the
19 Florham Park facility?

20 A. It's a large building. I think
21 it's a huge building. Building 105 I had
22 estimated earlier as 200,000 square feet.

23 Q. And you said out of the 200,000,
24 you thought about 3,000 was used by Novartis
25 country or group employees. Correct?

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2 A. Yeah, I think that's correct.
3 It's still correct.

4 Q. And of the remaining 197,000
5 square feet, is that all occupied by Novartis
6 Pharmaceutical employees?

7 A. I believe it's the oncology
8 business unit in Novartis Pharmaceuticals
9 Corporation that occupies virtually the rest of
10 the space.

11 Q. The HR department of Novartis
12 Pharmaceuticals is in the Florham Park office?

13 A. I don't know.

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14 Q. How many employees of Novartis
15 country group are at the East Hanover office?
16 A. None. Country? None.
17 MR. WITTELS: Why don't we take
18 a five or 10-minute break?
19 MR. FITZPATRICK: While you're
20 doing it, Steve, this is what Jim Robinson
21 turned out in terms of trying to come up with a
22 list. It doesn't go back in time. That's
23 another list of these employees and it's more
24 comprehensive.
25 MR. PACE: You asked for whether

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2 a list existed in HR. It didn't exist in HR,
3 but the computer was able to spit out the data
4 it contained, which is all of this, which is
5 all of the employees of either Finance, Corp.
6 or Services, and they're, I guess, as defined
7 in that little legend in the upper right-hand
8 corner.
9 MR. FITZPATRICK: It looks
10 like -- to us like this list doesn't include
11 the intellectual property people.
12 THE WITNESS: It says CIP, some
13 intellectual property people. I'm here. The
14 rest are there.
15 MR. FITZPATRICK: Let's go off.
16 (A recess was taken from 4:03 p.m.

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17 to 4:44 p.m.)

18 (Plaintiffs' Merkeson Exhibit 10:

19 Marked for identification.)

20 Q. I was told by your counsel off
21 the record while we had the break that you
22 could not identify which of those employees was
23 in Florham Park, Building 105. Is that right?

24 A. Correct.

25 Q. How many employees are there of

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2 Novartis Services or Novartis Finance who work
3 in Florham Park 105?

4 A. No, no. Novartis Finance
5 employees are only in Manhattan, and having
6 counted on that list, which I believe was
7 correct, it's 29 employees. There were three
8 employees of Novartis Corporation. And so the
9 remainder, which amounts into the 130s, you
10 know, plus or minus 130, is Novartis Services,
11 Inc. And the variance mostly is in the
12 corporate intellectual property group; it goes
13 up and down.

14 Q. And how many of the Novartis
15 Services employees in the corporate
16 intellectual property group work in the Florham
17 Park office?

18 A. They're all in Building 104, all
19 of them. There are intellectual property

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20 people in some of the other affiliates, but
21 they don't work for Novartis Services, Inc.
22 Q. About how many people work for
23 corporate intellectual property in Building 104
24 for NSI?
25 A. Something like 55 or more.

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2 Q. Fifty-five?
3 A. Persons.
4 Q. People who are paid by Novartis
5 Services work in the Florham Park Building 104?
6 A. That's right.
7 Q. How big is the 104, Building
8 104, facility?
9 A. It's about the same size as
10 Building 105, but I don't know much about it.
11 It's probably 200,000 square feet also, but I
12 don't know that much about it.
13 Q. So you don't know how much of
14 that is taken up by the 55 or so NSI employees?
15 A. I don't know.
16 Q. And these NSI employees, are
17 they doing work for Novartis Pharmaceuticals?
18 MR. PACE: Object to form.
19 A. Novartis Services and the
20 corporate intellectual property works for --
21 they work for all the operating companies,
22 including Novartis Pharmaceuticals Corporation.

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23 Q. Is there -- is there a separate
24 lease that -- strike that.
25 Who is -- which company's name

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2 is on the lease at Florham Park 105?

3 A. To my know ledge, it's Novarti s
4 Pharmaceuti cal s Corporati on.

5 Q. So Novartis Corp. is not on the
6 lease at all?

7 A. No.

8 Q. Correct. So Novartis Services
9 people who work in that building, are they in
10 separate offices designated Novartis Services,
11 or is it all mixed in together?

12 A. No, no. Novartis Corporation
13 and Novartis Services. Novartis Services has a
14 little separate door office. Novartis
15 Corporation, the three people that are Novartis
16 Corporation, it shows on the -- there's a sign
17 that says "Novartis Corporation." Novartis
18 Services occupies the rest of that space and
19 that says "Novartis Services, Inc." And they
20 are in a contiguous space, one little area of
21 that entire building. They're all together in
22 that large building.

23 Q. But they're not separated by
24 walls from the other Novartis Pharmaceutical
25 people?

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2 A. Indeed, they are. Actually,
3 they are. There are -- actually, there is a
4 wall literally around the Novartis
5 Corporation/Novartis Services office space.
6 They have their own -- perhaps their own
7 entrance. When I come out of the elevator,
8 there's a sign that shows you to go to the
9 right there, and then you walk down a little
10 corridor and then you actually have to go in
11 off a corridor to get in there. In one case,
12 there's a locked door and in one case there's
13 just an entry area. But it's separated from
14 the rest of the oncology people who are out
15 there.

16 Q. Is there no entrance way from
17 the Novartis Services and Novartis Corp. area
18 to Novartis Pharmaceutical?

19 A. When you walk back to the main
20 corridor, there's nothing that would prevent a
21 Novartis Corporation/Novartis Services employee
22 from not walking down, for example, to the
23 bathrooms, which are near the elevators, and
24 walking onto a Novartis Pharmaceuticals' area.

25 Q. Is there a lunchroom facility

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2 there?

3 A. Downstairs on the first floor
4 there is a cafeteria and -- there's a lunchroom
5 area downstairs on the first floor or on the
6 Level P floor.

7 Q. Is that operated by Novartis
8 Pharmaceuticals?

9 A. I don't think so. I think it's
10 a third-party service provider that comes in
11 and provides -- sells lunch.

12 Q. What services -- does Novartis
13 Pharmaceuticals have a separate lease with
14 Novartis Services or Novartis Corp. at its
15 Florham Park facility?

16 A. I believe there's an oral
17 understanding of the charging per year for the
18 use of the space. It's an oral understanding.
19 We wouldn't go to the effort of making a formal
20 lease in this instance; the space is too small.

21 Q. And how much is paid -- how much
22 is paid per year by Novartis Pharmaceutical --
23 by Novartis Services to Novartis
24 Pharmaceuticals?

25 A. I don't know.

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2 Q. Who pays that money?

3 A. It's an arm's length fee and
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4 it's done by accounting under Urs Naegelin, who
5 would have negotiated the amount.

6 Q. So does he change the amount
7 each year as to what Novartis Services is going
8 to pay?

9 A. I don't think so.

10 Q. What do they pay per year?

11 A. I don't know.

12 Q. Have you ever seen any
13 accounting documents showing an accounting
14 entry for payment by Novartis Services for the
15 space that has Florham Park at Building 105?

16 A. No.

17 Q. How did you learn there was an
18 oral agreement?

19 A. I've asked as their general
20 counsel, "Do you want me to write a document?"

21 Q. Who has the oral agreement? Who
22 is it between, which people?

23 A. Urs Naegelin as CFO and Gary
24 Rosenthal as CFO of Novartis Pharmaceuticals
25 Corporation.

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2 Q. What other facilities does --
3 Building 105, does Novartis Services and
4 Novartis Corp. have access to?

5 MR. FITZPATRICK: Objection as
6 to form.

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7 Q. Do you know if there's -- for
8 instance, are there copy machines? Are there
9 computers at Novartis Services?

10 A. No, no, no. Novartis
11 Corporation has its own copier machines and its
12 own computers and whatnot. So, no, that's in
13 our offices. I'm sorry. I'll speak louder.

14 Q. So Novartis Services, do they
15 have their own separate computer services
16 company for their computers, or do they use the
17 Novartis Pharmaceutical people to service their
18 computers?

19 A. There is a service. And that's
20 one where in many large corporations you'd
21 expect. The greater concentration of a group,
22 something like IT, you'll take the larger group
23 and then you'll have the services in a
24 cross-services agreement like we have, you'll
25 have that other company render services. So in

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2 that instance, like in payroll, you know, 130
3 people for 7 or 8,000 payroll, Novartis
4 Pharmaceuticals Corporation does render some IT
5 assistance services. They may set up the
6 computers and make sure they're running.
7 Q. And is there any payment that's
8 made by Novartis Services to NPC, Novartis
9 Pharmaceutical, for the IT services?

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- 10 A. Oh, yes.
- 11 Q. And where is that documented?
- 12 A. This would be -- again, it's an
- 13 oral agreement as to the billing amount, but
- 14 it's definitely billed and then paid by
- 15 Novartis Corporation.
- 16 Q. You say "billed." Is it billed
- 17 orally, or is it billed in writing?
- 18 A. No. Novartis Pharmaceuticals
- 19 Corporation would bill that in writing.
- 20 Q. And who from Novartis Services
- 21 pays that bill?
- 22 A. Accounting, under Thomas
- 23 Luscher, would pay the bill.
- 24 Q. What other bills are received by
- 25 Novartis Services from Novartis Pharmaceuticals

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- 2 in connection with that office space in a year?
- 3 A. I can't recall anything else.
- 4 Q. So is there a bill that's
- 5 generated from the Novartis Pharmaceuticals for
- 6 the lease of the office space, or is that,
- 7 again, just orally? You don't know?
- 8 A. I don't know.
- 9 Q. And Thomas Luscher is the one
- 10 who would have knowledge of what amounts are
- 11 paid?
- 12 A. True.

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13 Q. He's the accountant at which
14 company?

15 A. Novartis Corporation, Novartis
16 Finance Corporation.

17 Q. What about for the space at
18 Florham Park Building 104? Is there a separate
19 lease for that, or is there, again, some sort
20 of oral agreement?

21 A. I don't know.

22 Q. Who would know that?

23 A. Thomas Luscher would know.

24 Q. Do you know how much he's paid
25 on a yearly basis for that?

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2 A. No.

3 Q. You said "cross-services
4 agreement." Is there some written agreement
5 between Novartis Pharmaceutical and Novartis
6 Services other than the operating service
7 agreement, or is that what you're referring to?

8 A. I think it's the operating
9 services agreement, Exhibit 7, that -- you
10 referred me to that, the services agreement
11 that covers this.

12 Q. You're saying that covers
13 payments both ways?

14 A. Yes, it does. I believe article
15 6 covers that.

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16 Q. And -- okay. All of the bills
17 then that pass between the parties during a
18 given year are maintained by Novartis Finance
19 Corp. and the respective accounting department
20 at Novartis Pharmaceutical. Correct?

21 A. Yeah. The accounting department
22 in Novartis Corporation and Novartis Finance
23 Corporation has the obligation to keep track of
24 the budget and the billings to Novartis.

25 MR. WITTELS: I'd ask for those

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2 bills. I think they probably were asked for
3 before, but I'd like to see all the bills back
4 and forth between the companies.

5 MR. FITZPATRICK: They have
6 either not been asked for, or by agreement
7 aren't being sought. But it's okay, we'll get
8 them.

9 Q. Novartis -- when you determine
10 at the end of the year on behalf of Novartis
11 Services how much you're going to bill Novartis
12 Pharmaceutical for the various services that
13 your departments have performed for Novartis
14 Pharmaceutical, do you decide that without any
15 input by Novartis Pharmaceuticals as to how
16 much you're going to charge them? Correct?

17 A. They have the opportunity to
18 review the bill and see if it makes sense to

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19 them in light of what they know, the services
20 that have been rendered to them. That would be
21 under, again, the CFO. And, yes, they do have
22 that opportunity. In fact, in this agreement
23 it kind of indicates they can consider it and
24 get back to us. Sometimes people have called
25 me up and discussed -- including from

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2 Pharmaceuticals, and said, What's in there, and
3 I tell them.

4 Q. Have you ever changed a bill
5 that you prepared for Novartis Services that
6 you sent to Novartis Pharmaceuticals?

7 A. To Novartis Pharmaceuticals, no.

8 Q. So no one has ever questioned a
9 bill enough to ask you on behalf of Novartis
10 Services to change the amount that you charged
11 them for services?

12 A. From Novartis Pharmaceuticals
13 Corporation, no.

14 Q. And you don't tell them -- you
15 don't tell Novartis Pharmaceuticals in advance
16 how much you're going to bill them. You just
17 decide that at the end of the year. Correct?

18 A. It is discussed at the beginning
19 of the year, actually, during budgets, so there
20 is a budget mechanism. We do have -- people
21 have a sense of what's going on, for example,

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22 what services are likely to be rendered or not.
23 And so there is a sense -- people have a sense
24 of what they're -- you know, more or less the
25 conversation is, Is it going to change much

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2 next year, Is it going up, Are the costs going
3 up, What's going on, so that their budget
4 system, people can budget appropriately.
5 These are arm's length billings
6 and so they -- people want to know. They have
7 a budget, they have to keep track of their
8 stuff. So, yeah, they do ask the question and
9 we do give them a sense. I see the budget and
10 then I'll say, Looks like it's going to be
11 roughly the same, depending on what services
12 are especially rendered. You'll know if you
13 ask for something different or new, that it
14 might change.

15 Q. When you say there's budgeting,
16 what sort of budgeting is done by Novartis
17 Corp. or Novartis Services for Novartis
18 Pharmaceuticals?

19 A. None is done for them. We
20 budget for Novartis and Services Corp.

21 Q. So when you prepare budgets at
22 the beginning of the year for your different
23 departments, do you then -- you would prepare
24 in that budget how much you think that

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25 department might have to spend for Novartis

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2 Pharmaceuticals. Is that right?

3 A. Budgeting is generally done in

4 the August/September/October time frame,

5 finalizing towards November. So it's not the

6 beginning of the year. Okay? We -- in

7 Novartis Services, Novartis Finance

8 Corporation, Novartis Corporation, we budget

9 for our company. For people at Novartis

10 Pharmaceuticals Corporation as an example or

11 some of the other companies, Gerber's as an

12 example, they prepare their own budget. They

13 will call up and say, You've performed services

14 this year, you're going to send us a bill. Is

15 it going to be dramatically different from last

16 year and what does it look like the next year.

17 And we'll consider based on what we've spent

18 during the year and what's gone on and give

19 them an estimate and suggest that, yes, it

20 should be much the same and, yes, some of the

21 billed services are changing.

22 Q. So are you saying that the

23 departments for Novartis Services fairly

24 consistently bill the same amount year after

25 year to Novartis Pharmaceuticals?

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2 A. Well, let me point out to you
3 that the departments that bill are security and
4 aviation that we talked about; internal audit;
5 health, safety and environment; and the
6 Washington D.C. group.

7 Q. Okay.

8 A. Those services do vary depending
9 on, for example, what legislation is going on,
10 depending on what airplane usage is going on,
11 depending on what security matter may be looked
12 at, depending on what health, safety and
13 environment matters may come up. So there is
14 some variance. And like I said to you, in a
15 given year, theoretically Novartis
16 Pharmaceuticals Corporation, which is, of
17 course, our largest corporation, huge
18 corporation certainly, you would expect they
19 would get a large bill, as they would use a lot
20 of services. But in fact they may not because
21 they have so large a group themselves they may
22 not always necessarily use all the services and
23 another company may need more.

24 Because the airplane is such a
25 large item and because Novartis Services and

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2 Novartis Tapaj are the only companies with
3 airplanes, that tends to overshadow and may
4 explain why -- Novartis Pharmaceuticals, which
5 has a heavy use of the airplane, why they might
6 pay more.

7 But if you took that aside and
8 then just took the actual services of the rest
9 of the service functions that are billed, they
10 may not be the largest user at all and they may
11 not get the largest bill.

12 Q. How much did Novartis pay to
13 Novartis Services in 2004 under the operating
14 agreement?

15 A. Including Tapaj, they paid about
16 \$18 million. That's not including the patent
17 and trademark department. I don't do that
18 billing. I don't know what that is.

19 Q. Who does that?

20 A. That's done by the patent and
21 trademark people.

22 Q. And who heads that?

23 A. That's Richard Gearhart.
24 (Witness and counsel conferring.)

25 Q. Do you want to change your

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2 answer after --

3 A. No.

4 Q. -- talking to your counsel?

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5 Okay.

6 The companies that are part of
7 the Novartis Services, security, internal
8 audit, HS&E, health, services (sic)
9 environment, these companies have a fairly
10 close working relationship with the people at
11 Novartis Pharmaceutical who they're working
12 with. Is that correct?

13 MR. WEXLER: Objection to form.

14 MR. FITZPATRICK: Can we hear
15 that back?

16 (Record read.)

17 MR. FITZPATRICK: Objection as
18 to form.

19 A. Yeah. The question is
20 relatively inaccurate, worded in inaccurate
21 words. You used the words health safety (sic).
22 I'm sorry. It's so -- I can't give an answer
23 based on the question as asked. If you could
24 rephrase or restate it, please?

25 Q. The companies that do work for

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2 Novartis that are -- strike that.

3 The departments at Novartis
4 Services that do work for Novartis
5 Pharmaceuticals, are these -- the heads of
6 these departments communicating on a regular
7 basis with the different departments at

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8 Pharmaceuticals who they might be doing work
9 for?

10 A. As well as -- yes, and as well
11 as other Novartis entities that they may do
12 work for, of course.

13 Q. So there's an information flow
14 back and forth between these companies as to
15 work that might be needed by Pharmaceuticals,
16 work that Novartis Services might decide they
17 want to do for Novartis Pharmaceuticals.
18 Correct?

19 A. Within their areas, yes.

20 Q. And the company has its own
21 intranet e-mail. Am I right? Within the
22 company, you can e-mail back and forth between
23 Novartis -- between the Novartis country group
24 and groups and Novartis Pharmaceuticals.
25 Correct?

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2 MR. FITZPATRICK: I'm going to
3 object as to form and ask that the question be
4 read back.

5 (Record read.)

6 MR. FITZPATRICK: I think you
7 need to define what "company" is.

8 Q. Well, am I right that Novartis
9 Services is part of a larger Novartis intranet
10 service? Correct?

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12 A. Okay. Each company has an
13 intranet page, intranet data system. I believe
14 there is an IT group who services that, what
15 you call network. So the answer is, there is a
16 way to communicate by e-mail among the Novartis
17 legal entities, across legal entities,
18 affiliates if you will, yes.

19 Q. So you can just e-mail within
20 the company that outsiders cannot see, from
21 Novartis Services to Novartis Pharmaceutical
22 people. Correct?

23 A. I really don't know. I
24 apologize. I'm not a technical person in that
25 regard. I don't know the answer to that.

Q. Do you ever get e-mails from

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2 Novartis Pharmaceutical people?

3 A. Oh, yeah.

4 Q. And you e-mail them back.
5 Correct?

6 A. I do.

7 Q. And who is maintaining the
8 intranet organization --

9 A. The server.

10 Q. -- or technology?

11 A. I don't know.

12 Q. Does Novartis -- do Novartis
13 corporate officers get involved in the

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14 budgeting for Novartis Pharmaceutical?

15 A. Definitely not.

16 Q. Do the Novartis Corporation

17 board members who are also on the board of

18 Novartis Pharmaceuticals get involved in

19 budgeting decisions for Novartis

20 Pharmaceuticals?

21 A. Okay. I'm going to answer the

22 question.

23 Q. You need to look at the

24 document?

25 A. No. The board members in any

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2 company approve the budget that their operating

3 company proposes to the board. So when an

4 operating group of people put together a

5 budget, like the CFO or the CEO of a company

6 put together their budget, they have a plan,

7 they have a budget, they propose it to their

8 board of directors. The board of directors

9 members do review it and then would approve the

10 budget. They may not approve the budget or

11 they may suggest changes to the budget. Does

12 that answer your question?

13 Q. So the Novartis corporate -- the

14 Novartis board members or officers who are also

15 part of the Novartis Pharmaceuticals board,

16 Barnett, Breu --

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17 A. No, no. Dr. Breu is not a
18 Novartis Corporation employee or officer.

19 Q. Isn't he on the board of
20 Novartis Corporation?

21 A. Yes. Oh, you're saying the
22 common board members.

23 Q. Yes.

24 A. There are two, three.

25 Q. Yes. You have three board

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2 members from Novartis Corporation, Ebeling,
3 Barnett and Breu, as well as an officer of
4 Novartis Corporation who sit on the Novartis
5 Pharmaceuticals board. Correct?

6 A. That's correct.

7 Q. And these four people who work
8 on the Novartis Corporation who are affiliated
9 as either board members or an officer in
10 Novartis Corporation approve budgets of
11 Novartis Pharmaceuticals. Correct?

12 A. On submission from Novartis
13 Pharmaceuticals as a board member of Novartis
14 Pharmaceuticals, they would consider and
15 approve or disapprove of the budget.

16 Q. Are you aware of what input
17 Mr. Ebeling has had into any of the operations
18 of Novartis Pharmaceuticals?

19 A. I really am not.

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20 Q. Do you know what role he plays
21 in deciding where Novartis Pharmaceuticals is
22 going to go in terms of its strategies and drug
23 sales, drug planning?

24 A. I am not. I'm just not aware of
25 it.

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2 Q. When -- who made the decision
3 that Novartis Pharmaceuticals would purchase
4 Novartis Ophthalmics? How was that decided?

5 A. I will, of course, state what I
6 know to tell you. Mr. Costa and someone who
7 works in Novartis Pharmaceuticals Corporation
8 believed that the products sold by Novartis
9 Ophthalmics were more closely aligned --
10 because they're prescription products, they're
11 more closely aligned with the Pharmaceuticals
12 business. They suggested to Mr. Barnett and I
13 believe to the board members of Novartis
14 Corporation or Novartis Finance Corporation, so
15 maybe Dr. Breu, that that business was more
16 closely aligned with Pharmaceutical.

17 It was agreed -- it was looked
18 into, it was agreed, and then the Novartis
19 Finance Corporation agreed to sell the stock of
20 Novartis Ophthalmics to Novartis
21 Pharmaceuticals Corporation.

22 At the same time that action was

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23 taken, it was looked at and realized that the
24 affiliation holding of Novartis Pharmaceuticals
25 Corporation of Ciba Vision Corporation was not

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2 really related because Ciba Vision Corporation
3 was more of a device company. They didn't sell
4 prescriptions. They sell contact lenses. So
5 it was decided that was not affiliated and
6 Novartis Pharmaceuticals suggested that they
7 sell that company back to Novartis Finance
8 Corporation, and again it was looked at and it
9 was agreed by the board and we purchased it.

10 Q. So when you say "agreed by the
11 board," agreed by the board of Novartis Corp.,
12 or agreed by Novartis Services?

13 A. Finance Corp. agreed to it.

14 Q. So would there be minutes of
15 Novartis Finance Corp. which reflected
16 discussions with Novartis Pharmaceutical people
17 about sales back and forth and purchases of
18 Novartis Ophthalmics?

19 THE WITNESS: Can I ask my
20 counsel --

21 MR. PACE: We provided them with
22 any reference in the minutes of Finance to
23 Pharma within the relevant time period, I think
24 beginning of 2001.

25 A. So, yes. The answer is you've

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2 been provided that in the minutes.

3 Q. You didn't give us the minutes.

4 You gave us resolutions.

5 A. Those are the minutes.

6 MR. PACE: If there was a
7 reference in the minutes, you got the minutes.
8 If there's --

9 A. That is the minutes. I believe
10 I wrote them, so it is in the minutes.

11 Q. I don't want to tell you your
12 business here. So why don't we --

13 (Plaintiffs' Merkeson Exhibits
14 11 through 14: Marked for identification.)

15 MR. FITZPATRICK: I think -- we
16 had a little confusion as to the exhibits, I
17 think, because Exhibit 10 is a document that I
18 thought was a list of the employees of what
19 we've been calling the country organization
20 companies and it turns out it's not. So I was
21 mistaken.

22 Q. Can you show -- before you go
23 back -- just to clear this up on Exhibit 10,
24 this list, are all these employees -- Novartis
25 Corp., Novartis Services or Novartis Finance

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2 employees current or ex?

3 A. I believe that all the Finance
4 and corporate employees are correctly stated
5 here. I don't know what the CSV stands for,
6 and don't recognize so many of the names that
7 might be CIB that I'm uncomfortable; I wouldn't
8 know all the intellectual property people. So
9 I don't know if that's completely accurate.

10 Q. This is Exhibit 10 you're
11 looking at?

12 A. I don't believe it's -- I don't
13 believe that this is accurate, to state that
14 they refer to CSV as Novartis Services
15 employees. I believe it's not accurate.

16 Q. The Novartis intellectual
17 property employees, are they all lawyers who
18 work at 104, Building 104? Are there other --

19 A. I believe in the patent area --
20 you can be a patent agent and not necessarily a
21 licensed attorney to work in patents. Also
22 there are legal assistants, paralegals and many
23 other professionals who work with intellectual
24 property who are not attorneys.

25 Q. And are they in a common space

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2 at Building 104 with Novartis Pharmaceuticals,
3 or are they in a separate space? How does that

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4 work?

5 A. They have a separate department.

6 There's a door. And it's a whole department

7 and it's in a separate section of the

8 building -- 55 people is a lot of people --

9 including offices and workstations and a larger
10 space.

11 Q. Now, are they doing the patent
12 work and intellectual property work for
13 Novartis Pharmaceuticals?

14 A. Among other things, they do the
15 patent, the intellectual property work for
16 Novartis Pharmaceuticals.

17 Q. Does Novartis Pharmaceuticals
18 have its own patent department?

19 A. No.

20 Q. Does it have its own
21 intellectual property department?

22 A. No.

23 Q. So all of the patent and
24 intellectual property questions that come up
25 are done by Novartis Services employees,

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2 correct, for Novartis Pharmaceuticals.

3 Correct?

4 A. Yes. If Novartis

5 Pharmaceuticals people have intellectual

6 property questions, they would go to Novartis

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7 Services people or presumably maybe to outside
8 counsel. They wouldn't come, for example, to
9 Novartis Corporation or Novartis Finance
10 Company. They'd go to that --

11 Q. To Novartis Services?

12 A. To Novartis Services.

13 Q. Who is the head of Novartis
14 Services' patent and intellectual property
15 group?

16 A. That would be Richard Gearhart.

17 Q. He's not on this 2004 listing
18 from Exhibit 2. Correct?

19 A. Let's see. I believe that he
20 is. Exhibit 3C.

21 Q. Okay. How much is paid -- how
22 much was paid in 2004 by Novartis
23 Pharmaceuticals for intellectual property and
24 patent issues?

25 A. I said I have no idea. It's

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2 billed and handled by Richard Gearhart and his
3 team.

4 Q. So he would have a record of how
5 much he billed for that year to Novartis
6 Pharmaceuticals?

7 A. Yes.

8 Q. Do you have any idea? Is it
9 more than a million dollars for 2004?

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10 A. It would be more than a million
11 dollars, yes.

12 Q. Would it be more than \$5
13 million?

14 A. I don't know.

15 MR. WITTELS: I ask for that
16 record, counsel, for how much was billed by the
17 intellectual property/patent department,
18 called -- what's it called -- called corporate
19 intellectual property, to Novartis
20 Pharmaceuticals for 2004 and earlier, and if
21 there's any bill yet, I'd ask for that.

22 MR. PACE: Just for the record,
23 this too, like all the other services charged
24 for, we've discussed at length during the meet
25 and confer. To the extent you're propounding

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2 new requests, we'll take them under advisement.

3 Q. While you have that Exhibit 3 in
4 front of you, where you just looked at the head
5 of the corporate intellectual property, the
6 2003 document, 3C -- do you have that?

7 A. Uh-huh, yes.

8 Q. What services, if any, does
9 public affairs provide, headed here by Brenda
10 Blanchard, to Novartis Pharmaceutical?

11 A. Brenda Blanchard is in the
12 Washington D.C. office of Novartis Services,

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13 Inc. and with Jim Elkin, also in the Washington
14 D.C. office, they deal with government and
15 regulatory agencies. They may -- Novartis
16 Pharmaceuticals Corporation has their own
17 employees in Washington, D.C. who deal with the
18 government and regulatory agencies. So I don't
19 know if they rendered any particular service
20 for them in the last two years that would have
21 been billed.

22 Q. Do you know if they did any --
23 provided any services that they didn't bill for
24 in terms of the other types, not -- you don't
25 use the word "services," but in the other

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2 capacities?

3 A. They may have performed services
4 for other affiliates in those years more than
5 Novartis Pharmaceuticals Corporation because
6 Novartis Pharmaceuticals Corporation has their
7 own staff down in Washington, D.C. So they may
8 not have. But I say "may" because there may
9 have been some incidental things that they may
10 have done that we didn't bill for, you know,
11 within a particular meeting or --

12 MR. FITZPATRICK: Are you
13 speculating now?

14 THE WITNESS: No, no.

15 MR. FITZPATRICK: I mean --
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16 THE WITNESS: I had the
17 discussion with Jim and with Brenda as to what
18 they did. We decided it was so de minimus we
19 didn't want to bill for it, so I'm kind of
20 explaining that.
21 Q. A discussion in the past year or
22 two when you were deciding what to bill?
23 A. Yes.
24 Q. What do you remember Brenda and
25 Jim telling you they did for Pharma, if

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2 anything?
3 A. They may have had meetings with
4 government agencies where they were
5 representing Sandoz, Inc., the generic company,
6 but Pharmaceutical matters also came up and the
7 prescription industry. So they have worked on
8 what you would refer to as "lobbying work"
9 where that also came up for Pharmaceuticals,
10 but it was so de minimus that it wasn't billed.
11 Q. In prior years before 2002 or
12 2003 and before, do you know if there was
13 billing by either of these groups, public
14 affairs, government relations, for work
15 provided to Pharmaceuticals?
16 A. I cannot recall.
17 Q. What is -- on this 3C, list of
18 the -- of Novartis group, you have another

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19 corporate intellectual person, Tom Hoxie. Is
20 that person in a separate group from Richard
21 Gearhart?

22 A. Tom Hoxie managed intellectual
23 property litigation. So -- he was not a report
24 to Richard Gearhart, but a report to Terry
25 Barnett, so he was listed separately there.

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2 Q. Does the intellectual
3 property -- corporate intellectual property
4 group decide which products might need patent
5 protection or intellectual property protection
6 and advise Novartis Pharmaceuticals of that
7 during the year?

8 A. That question is -- I think I
9 understand the question. And the answer to
10 your question is -- I'll just say is yes.

11 Q. So -- okay.

12 (Record read.)

13 Q. And by "intellectual property,"
14 I was talking, of course, about the Novartis
15 Services intellectual property group. Correct?
16 You understood that?

17 A. Yes.

18 Q. Okay. Does the Novartis
19 Services public affairs and communications
20 department provide work for Novartis
21 Pharmaceuticals?

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22 A. No. Actually, that is more for
23 public announcements and public things that we
24 would have where we also have to send a
25 regulatory notice to the SEC or where Novartis

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2 AG might make a public announcement and they
3 ask us to disseminate it in the United States,
4 so we perform a service for Novartis AG in
5 public communications. We may also do a
6 communication itself of Novartis Corporation,
7 you know, we've bought or sold something, or
8 Novartis Finance Corporation, we've bought or
9 sold something. That's the kind of thing that
10 they get involved in.

11 They don't do, to my knowledge,
12 anything -- and, by the way, it's not a billed
13 service. None of -- I mentioned the services
14 that were done and that wasn't one of them.
15 That's not a billed service to Novartis
16 Pharmaceuticals Corporation at all.

17 Q. So this public affairs is
18 something that you would be providing, "you"
19 being Novartis Services, would be providing.
20 Is that Novartis Services or Novartis Corp.?

21 A. That's Novartis Finance Corp.

22 Q. So Novartis Finance Corp. is
23 providing a service to its parent company in
24 Switzerland, the Novartis AG or the Novartis

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25 International. Correct?

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2 A. It's more of a kind of a reverse
3 stewardship. You must make announcements. The
4 SEC requires that you put out announcements
5 timely and appropriately in the United States,
6 and so Novartis AG retains Novartis Finance
7 Corporation in investor relations and in public
8 affairs and communications to make sure to get
9 out the necessary data to the public and to
10 make sure the announcements are properly
11 disseminated.

12 Q. Julie Kane was in health,
13 safety, environment until recently at Novartis
14 Services. Is that right?

15 A. She was. She personally had
16 been in Novartis Finance Corporation, but her
17 team was in Novartis Services, and then the
18 Novartis Services team in health, safety,
19 environment does bill for services.

20 Q. And what would they do? What
21 sort of things?

22 A. You asked that question a while
23 ago. If you go back to the record, I'm sure we
24 can read it back.

25 Q. Did -- the things that Julie

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2 Kane was doing at Novartis Services while she
3 was employed by Novartis Finance, she was doing
4 on site at Novartis Pharmaceuticals for them?

5 A. Step back. We -- to my
6 knowledge, if you're a service provider --
7 Julie Kane is a lawyer by trade. If you're a
8 service provider, you may attend meetings at
9 your client's offices, if you do work for them,
10 you might. But her offices were in New York
11 and of course most of the time she performed
12 her services in New York.

13 Q. Do you know how often she used
14 to go to New Jersey?

15 A. No, I don't know. I don't know.

16 Q. The finance, treasury, investor
17 relations department that in 2003 was headed by
18 Urs Naegelin --

19 A. Not a billed service.

20 Q. -- what work was performed for
21 Novartis Pharmaceuticals by that group?

22 A. To that extent, that group acts
23 as the bank for the group. So they make loans
24 or arrange them, whether it's from Novartis
25 Corporation or Novartis Finance Corporation,

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2 and collect interest on an arm's-length basis
3 from any of the companies that needed working
4 capital or long-term money. So we also would
5 determine as an investor how much capital to
6 put in the company so that each of our
7 companies are properly capitalized, have
8 adequate resources to meet their needs cash
9 flow wise. And that's the principal work that
10 they did in the -- in that area of finance.

11 Q. So did Urs Naegelin and his
12 group decide whether Novartis Pharmaceuticals
13 was properly capitalized and whether it might
14 need infusions of capital and loans?

15 A. Once a year we look at the
16 capitalization of a company to determine if we
17 wish to add to their capital, and then
18 occasionally, if there's a major acquisition or
19 some other major thing going on, we'll look
20 again to see if they need additional capital,
21 and, if necessary, we'll make a contribution of
22 capital, as you have in your minutes you gave
23 me here in Exhibit 11.

24 And also we'll look -- many
25 times the companies will come to us to borrow

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2 money. They decide if they want to do long
3 term or short term. And we'll evaluate it and
4 offer rates at the long-term rate and

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5 short-term rate. They'll set up their loans
6 with us. Their CFOs will discuss what their
7 capital needs are and we'll make sure that
8 they're adequately capitalized as a shareholder
9 and as an investor in the company.

10 Q. So in terms of the operations of
11 Novartis Pharmaceutical, with Mr. Naegelin as a
12 board member of Novartis Pharmaceutical and
13 also an officer of Novartis Finance. Is that
14 right?

15 A. That's right.

16 Q. He would be making a
17 determination as to whether, on a yearly basis,
18 Novartis Pharmaceuticals needed capital. And
19 you said, in fact, Exhibit 11 shows what? A
20 loan infusion that year?

21 MR. WEXLER: Objection to form.

22 MR. FITZPATRICK: Your form is
23 just --

24 Q. Am I right that -- describe
25 what -- let me see Exhibit 11, because I don't

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2 have a copy.

3 Counsel just gave us 11, 12, 13
4 and 14, which are the minutes. These are
5 minutes that you pulled, I guess during lunch,
6 in response to our question about
7 capitalization, or minutes from Novartis

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8 Finance showing transactions with Novartis
9 Pharmaceuticals. Is that right?

10 MR. PACE: Yes.

11 MR. FITZPATRICK: That's right.

12 A. That is correct.

13 Q. And Plaintiffs' Exhibit 11 shows
14 that Novartis Finance Corporation decided to
15 contribute \$1 billion to the capital of
16 Novartis Pharmaceuticals Corporation on or
17 about July 23rd of '05. Is that correct?

18 A. That's correct.

19 Q. And that decision, that Novartis
20 Pharmaceuticals needed a billion dollars of
21 capital contribution, is something that was
22 decided by Novartis Finance Corp. Is that
23 correct?

24 A. Upon request of Novartis
25 Pharmaceuticals Corp., Novartis Finance Corp.

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2 evaluated their debt and equity position and
3 determined that they needed additional equity
4 and contributed a billion dollars to the equity
5 of the company as an investor.

6 Q. Did you also say before that
7 Novartis Finance Corporation evaluates on a
8 yearly basis whether companies who are its
9 subsidiaries need capital infusions or not for
10 operating capital?

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12 A. Correct. We look at their
13 Q. So do you have -- at Novartis
14 Corp., do you do meetings where you go over the
15 budgets of the different subsidiary companies,
16 including Novartis Pharmaceuticals?
17 A. No. They submit a working
18 capital plan for the year, each company showing
19 what their working capital would be at each
20 month of the year. On their estimates and on
21 the basis of their working capital, we evaluate
22 whether or not they need capital as a capital
23 contribution or as loans.
24 Q. So when you say "we," you're
25 talking about Novartis Finance and/or Novartis

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2 Services, or Novartis Finance?
3 A. Novartis Finance only. And I'm
4 speaking -- referring, when I say "we," to Ken
5 Schuster, myself, Carl Briscoe and Urs
6 Naegelin.
7 Q. So you four at Novartis Finance
8 Corp. will look at the operating plans that are
9 submitted to you by Novartis Pharmaceutical?
10 A. No.
11 Q. The budgeting plans?
12 A. No.
13 Q. What documents do you look at

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14 when you're determining whether --

15 A. Their working capital estimates
16 for the following year.

17 Q. Okay. And how often do you get
18 their working capital estimates, you at
19 Novartis Finance Corp.?

20 A. I don't get it. Carl Briscoe
21 gets it.

22 Q. What's his position at Novartis
23 Finance?

24 A. He's assistant treasurer. Not
25 an officer.

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2 Q. And he's under Urs Naegelin?

3 A. He works for Ken Schuster, the
4 treasurer.

5 Q. So these gentlemen get the
6 working capital estimates from Novartis
7 Pharmaceutical and you have an evaluation by
8 the treasurer and the finance person,
9 Mr. Naegelin, and then they have a meeting with
10 you and you decide whether Novartis
11 Pharmaceutical needs additional working
12 capital. Correct?

13 A. No, not -- that they need a
14 capital infusion, not working capital.

15 Q. A capital infusion provides
16 capital so that you can have working capital.

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17 Correct? Is that correct?

18 A. Not necessarily.

19 Q. Okay. Well, I mean, if you take
20 money as capital and you infuse it into a
21 company, that could provide working capital so
22 the business can operate. Correct?

23 A. It could.

24 Q. Okay. When you have these
25 meetings about deciding whether Novartis

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2 Pharmaceutical should have additional working
3 capital put into it, do you have meetings where
4 there's minutes kept or where you keep notes of
5 the meetings in deciding what to do in terms of
6 adding working capital?

7 A. I take some notes on a chart of
8 their debt, their equity and their cash flow,
9 their debt-to-equity ratio, and on that basis
10 we make our decisions and our recommendations,
11 including, if we want, companies -- if we ask
12 companies to pay dividends to us.

13 We make our recommendations and
14 then we go back to the companies and inform
15 them that we recommend they pay a dividend or
16 we recommend they accept a contribution of
17 capital or we suggest they take long-term or
18 short-term debt as they choose, and then they
19 come back to us and tell us what they want to

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20 do. We don't agree or disagree and then we
21 implement it with this kind of documentation
22 that you see.

23 MR. WITTELS: Off the record.

24 (Discussion off the record.)

25 Q. What other loans were made,

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2 Looking at 12, 13, 14, from the minutes in
3 terms of monies to Novartis Pharmaceuticals
4 during the past few years by Novartis Finance?
5 This is 14.

6 A. I don't recollect. There is a
7 commercial paper program which is the working
8 capital program; that's short-term loans,
9 short-term kind of day-to-day money. I don't
10 believe that's in the minutes, looking at the
11 minutes. I don't believe any other long-term
12 loans remain by Novartis Finance Corporation to
13 Novartis Pharmaceuticals Corporation from
14 Novartis Finance Corporation.

15 Q. You said they're short-term
16 loans.

17 A. There is a commercial paper
18 program between Novartis Finance Corporation
19 and all of the American -- U.S. operating
20 companies in which they make short-term --
21 basically it's commercial paper backed loans to
22 the affiliates.

23 Q. Merkeson ASCII - 9-27-05
Is that mentioned in any of the
24 minutes?
25 A. Maybe from seven, eight years

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2 ago. Not current.
3 Q. Okay.
4 MR. WITTELS: I would ask,
5 counsel, that you produce the financial records
6 that were provided to Novartis Finance on a
7 yearly basis, as well as any records
8 reflecting -- other than the final records, the
9 minutes, but any records before that in which
10 Novartis Finance decided to authorize the loan
11 of the billion dollars to Novartis
12 Pharmaceuticals.

13 THE WITNESS: There was no loan
14 for a billion dollars.

15 MR. FITZPATRICK: There was no
16 loan.

17 Q. What was the transaction?

18 MR. WITTELS: Excuse me. Of
19 working capital, infusion of working capital.
20 Sorry. I'm talking about the working capital
21 infusion.

22 MR. FITZPATRICK: I'll take it
23 under consideration.

24 Q. Are -- how often does the
25 Novartis Pharmaceuticals board meet?

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2 A. I don't know.

3 Q. How often does the Novartis
4 Corporation board meet?

5 A. I believe three times a year.

6 Q. And where does it meet?

7 A. I believe in New York City.

8 Q. Does it ever meet in New Jersey?

9 A. I don't know.

10 Q. And how often does Novartis
11 Finance Corp. have board of directors'
12 meetings?

13 A. Mostly we operate with unanimous
14 consents or telephone meetings. We rarely have
15 an active board meeting.

16 Q. And you mentioned there were
17 three Novartis Corp. employees in New Jersey.
18 Who are those again?

19 A. Keith Boudreau.

20 Q. Those are the human resources
21 people? No, I'm sorry.

22 A. Tax and insurance. And their
23 secretary.

24 Q. Just name them again, I'm sorry,
25 the three people who were working for Novartis

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2 Corp. in New Jersey. Boudreau?

3 A. Marianne Francisco and Marinelli
4 Sullivan.

5 MR. WITTELS: Let's take a
6 break.

7 (A recess was taken from 5:42 p.m.
8 to 5:49 p.m.)

9 Q. Looking at Exhibit 5, a list of
10 Novartis Pharmaceuticals' board of directors,
11 do you know if any of these --

12 A. I'm getting there. Go ahead.

13 Q. Do you know if any of these
14 directors who are also board members of
15 Novartis Corporation, Ebeling, Barnett or Breu,
16 or Naegelin as a Novartis Corp. officer, are on
17 any committees of Novartis Pharmaceutical?

18 A. They are not.

19 Q. Is Paulo Costa on any committees
20 of any of the Novartis Services, Novartis
21 Finance or Novartis Corporation?

22 A. No.

23 Q. Were -- okay. Do you know if
24 Ebeling, Barnett, Breu or Naegelin participated
25 in business-making decisions at Novartis

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2 Pharmaceuticals during the year?

3 A. That were not done at the board
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4 of directors, you mean?

5 Q. Right.

6 A. I don't believe so. No, there
7 would not have been.

8 Q. Do you know if Thomas Ebeling
9 had ongoing contact with Paolo Costa, the head
10 of Novartis Pharmaceuticals, during the year?

11 A. I personally don't know it. I
12 imagine they --

13 MR. FITZPATRICK: Don't
14 speculate.

15 A. I don't know it.

16 Q. So you have no idea then whether
17 they were communicating and talking about
18 strategy and business decisions?

19 A. I just don't know.

20 Q. Did -- what purchase decisions
21 did Novartis Pharmaceuticals need to get the
22 permission from Novartis Financing?

23 MR. FITZPATRICK: If any.
24 Objection as to form.

25 A. No, no. The answer to your

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2 question is none.

3 Q. What business operations did
4 Novartis Pharmaceuticals Corp. need to gain the
5 permission or authority from Novartis Finance,
6 Novartis Corp. or Novartis Services?

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7 MR. WEXLER: Objection to form.

8 A. I don't know.

9 Q. None that you're aware of?

10 A. None.

11 Q. Could Novartis Pharmaceuticals
12 unilaterally decide to buy a business without
13 the permission of Novartis Finance Corp. or
14 Novartis Service Corp. or Novartis Corp.?

15 A. And its board of directors, yes.

16 Q. You're saying Novartis
17 Pharmaceuticals Corp. could buy a new, separate
18 company without getting the permission of its
19 board?

20 A. Or even its shareholder.

21 Q. Is that what you're saying?

22 A. They need -- the Novartis
23 Pharmaceuticals Corporation needs permission of
24 their board to buy and sell companies. They do
25 not need the permission of their shareholder to

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2 buy and sell companies.

3 Q. How do you know that?

4 A. Because they have, as all
5 corporations have, articles of incorporation
6 and bylaws, and therefore within those articles
7 of incorporation and bylaws, they have the
8 authority to buy and sell, they have the
9 authority to act. When they step forward to do

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10 that, they may need to borrow money.

11 MR. FITZPATRICK: You're

12 speculating.

13 THE WITNESS: No, I'm not.

14 MR. FITZPATRICK: It's not

15 responsive.

16 THE WITNESS: Okay. That's

17 different.

18 MR. WITTELS: Let me mark as

19 Exhibit 15, a one-page document, NCORP 1767,

20 headed -- looks like an e-mail to Maria

21 Gencarelli with the name Kenneth Wagner at the

22 top, 5/25/05.

23 (Plaintiffs' Merkeson Exhibit 15:

24 Marked for identification.)

25 Q. Let me show you what we've

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2 marked as Plaintiffs' Exhibit 15. Is this an

3 e-mail or -- do you know what this is?

4 A. I actually don't know what it

5 is.

6 Q. Okay. Do you know who Kenneth

7 Wagner is?

8 A. No.

9 Q. Do you know who Maria Gencarelli

10 is?

11 A. No.

12 Q. How about Burgess Abu or Abu

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13 Small?

14 A. No, I don't know.

15 Q. How about Robert Secoli?

16 A. I believe that Robert Secoli is
17 in record retention management or was in record
18 retention management at Novartis
19 Pharmaceuticals Corporation and arranges record
20 retention for a number of the companies.

21 Q. Do you know, when it refers to
22 "Q2 Allocation for Services," what that means
23 by looking at the document?

24 A. Second quarter allocation of
25 services. Record retention, they're charging

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2 Novartis Corp. corporate and it's going into an
3 account, and then they're also charging
4 Novartis Consumer Health, Inc. for record
5 retention services. We pay an arm's-length
6 service fee to keep boxes of our records within
7 the Novartis Pharmaceuticals' record retention
8 storage; I believe it's \$3 a box per month.

9 Q. "We" being who?

10 A. Novartis Finance Corp., Novartis
11 Services and Novartis Corporation. Depending
12 on how many boxes they have. We are charged in
13 total for the corporate on a corporate
14 allocation. Similarly, Novartis Consumer
15 Health. So I know about the records retention.

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16 I don't know about -- I don't know what Q2 mail
17 services is. I don't know what that is.

18 Q. So where are the records kept?

19 A. That's embarrassing. At a
20 warehouse somewhere in New Jersey.

21 Q. So those records are -- belong
22 to Novartis corporate, as you talked about it?

23 A. Novartis Corporation, Novartis
24 Services, Novartis Finance Corporation.

25 Q. The country Novartis.

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2 A. Uh-huh.

3 Q. The country organization. And
4 you pay a fee to Novartis Pharmaceuticals, who
5 is keeping the records?

6 A. Retaining the records, making
7 sure they're secure, just holding them in the
8 warehouse, but making sure they're secure,
9 being able to locate them. We can call them
10 back, they come back in a day or two. And we
11 pay for that service an arm's length fee of \$3
12 per box.

13 Q. And Novartis Pharmaceutical is
14 maintaining all of your stored records.
15 Correct?

16 MR. FITZPATRICK: Objection as
17 to form. That's awfully broad.

18 Q. All the records that go into
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19 storage are from Novartis country group?

20 A. All the ones that we have in
21 Novartis Pharmaceuticals Corporation would be
22 reflected in the billing. But we don't have to
23 actually use or do use Novartis Pharmaceuticals
24 for record retention. In fact, we don't only
25 use Novartis Pharmaceuticals for record

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2 retention, "we" being Novartis Finance
3 Corporation, Novartis Services, Inc. and
4 Novartis Corporation.

5 Q. Who would be paying the
6 insurance at the New Jersey Florham Park
7 facilities for the building?

8 A. Who would be paying for
9 insurance for the building? What insurance for
10 the building are you referring to?

11 Q. For the office space. Don't you
12 have to maintain insurance at the building?

13 A. Such as fire and theft?

14 Q. Sure.

15 A. Novartis Corporation has the
16 insurance department and Marianne Francisco
17 would work to have the requisite insurance
18 policies in place. Those policies are then
19 sold back to the different corporations and
20 they would make their payments on their
21 insurance costs.

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22 Q. To Novartis Corp.?

23 A. No. It's -- Novartis

24 Corporation would place the insurance, get the

25 policies as the professional in insurance, and

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2 then each of the companies would get their own

3 policies and bills.

4 Q. So did Novartis Corp. charge a

5 fee to Novartis Pharmaceuticals for placing the

6 insurance as a, quote, professional?

7 A. We look at the tax and the

8 insurance service within Novartis Corporation

9 as more of a stewardship function than a

10 billable service. Novartis Finance Corporation

11 pays Novartis Corporation for that work because

12 they're the most -- they own the stock, and

13 Novartis Finance Corporation collects its money

14 from the financing fees, the spread on our cost

15 of capital versus what we loan to the

16 subsidiaries. So we collect more interest in

17 than we pay out and that covers the costs of

18 operation, including for Marianne Francisco.

19 Q. As a lender of money to your --

20 to Novartis Pharmaceuticals, for instance, cost

21 of capital, the interest spread is what pays

22 for the non-paying services that you provide at

23 Novartis Services?

24 A. The things that really relate

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25 more to stewardship type services than

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2 operating services for which we charge. We
3 would want our companies to have the best rate
4 on insurance. By doing it on a group basis, we
5 can get a more favorable rate. And we would
6 want them to be insured, obviously, since we
7 have a large investment in the company to
8 assure that they are covered. If something
9 goes wrong, we have that covered.

10 Q. So Novartis Corp. is obtaining
11 all of the insurance products that Novartis
12 Pharmaceutical needs at its different offices
13 throughout the United States. Correct?

14 A. No. Novartis Pharmaceuticals
15 Corporation has to assure that each of their
16 offices is properly covered and would be
17 covered in the policies. Novartis Corporation
18 would place the insurance, bidding, obtaining
19 the coverages and assure that their -- and make
20 sure that their affiliates have coverage.

21 Q. And who at Novartis Corp. is
22 performing that function of placing of
23 insurance?

24 A. Marianne Francisco.

25 Q. And she's doing that, you said,

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2 for the affiliates, but she's doing it also for
3 Novartis Pharmaceuticals and all of its
4 insurance needs. Correct?

5 A. No. There's an insurance person
6 at Novartis Pharmaceuticals who handles the
7 insurance at Novartis Pharmaceuticals and
8 Marianne performs the service at Novartis
9 Corporation.

10 Q. For Novartis Pharmaceuticals?

11 A. No, for Novartis Corporation,
12 which is offered in conjunction to all the
13 companies, that they have the central purchase
14 of insurance to keep the rates low. So we do
15 central purchasing of insurance. When you say
16 it's for the Novartis Pharmaceuticals
17 Corporation, the Novartis Pharmaceuticals
18 Corporation has their own insurance people. So
19 effectively Novartis has agreed that they're --
20 that they'll get a better rate by doing it as a
21 group and so they participate in it. It's a
22 little different to use the terminology you
23 used.

24 Q. When you say "participate"
25 however, Novartis Corp. is out there, you said,

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2 as an expert. They have the "expertise," you
3 used the term, in insurance. Correct?

4 A. The services that we bill for in
5 the services function, they have unique
6 expertise. In the case of tax or insurance or,
7 for that matter, other functions that are not
8 billed, either -- we're in the central position
9 to do it, not because we have unique expertise.
10 In the case of insurance, we don't happen to
11 have unique expertise. Novartis
12 Pharmaceuticals Corporation has an insurance
13 department which also has expertise.

14 Q. How many insurance policies a
15 year does Novartis -- does Novartis Corp. help
16 obtain for Novartis Pharmaceuticals?

17 A. I don't know the details.

18 Q. Who would know that?

19 A. Marianne Francisco.

20 Q. And she would maintain all of
21 the communications back and forth between her
22 and the Novartis Pharmaceuticals people in
23 terms of obtaining insurance. Correct?

24 A. Yes.

25 MR. WITTELS: I would request

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2 that information from Pharmaceuticals and
3 Novartis Corp.

4 MR. FITZPATRICK: What exactly

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5 is the information?

6 MR. PACE: Counsel, what
7 information?

8 MR. WITTELS: The communications
9 back and forth in terms of obtaining insurance
10 and the insurance policies.

11 MR. FITZPATRICK: No.

12 MR. PACE: We discussed this in
13 our written responses, and as Wayne just -- the
14 witness has provided additional details. It's
15 unclear what else you're asking for.

16 MR. WITTELS: I'm asking for the
17 backup to see what amount of insurance was
18 placed, what discussions were back and forth,
19 and the communications between the Novartis
20 Corp. and Novartis Pharmaceuticals with respect
21 to insurance.

22 MR. FITZPATRICK: You had a lot
23 of time to ask all that. You had a document
24 request. You had interrogatories to be served
25 by a certain time.

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2 MR. WITTELS: Counsel --

3 MR. FITZPATRICK: Let me finish.
4 I'm not going to go and undertake further
5 discovery at this point. I won't look for
6 those things. Where there are discrete things
7 that are easy to get or financial things that

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8 come out of this deposition, that's a different
9 story. But I'm not going to just reopen
10 discovery here.

11 MR. WITTELS: Discovery is not
12 closed, but that's another subject.

13 MR. PACE: You can check the
14 schedule.

15 MR. FITZPATRICK: When you can
16 ask interrogatories, when you can serve
17 documents, there's been serious negotiations
18 about it. You didn't participate in it. Your
19 partner did.

20 MR. WITTELS: Counsel, I don't
21 want to muck up the record with it.

22 MR. FITZPATRICK: But you're
23 telling us what's called for and what's not
24 called for, and you say --

25 MR. WITTELS: Counsel, can we

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2 talk about it off the record? It's not germane
3 to what we're doing now.

4 MR. FITZPATRICK: No. And
5 everything else we're doing here is germane to
6 the issues in this case? You're wasting our
7 time. You spent half an hour on some girl who
8 is a human resources person.

9 MR. WITTELS: Can you keep your
10 gratuitous comments to yourself, please?

11 Merkeson ASCII - 9-27-05
MR. FITZPATRICK: No.

12 MR. WITTELS: I want the record
13 to reflect that my deposition is being impeded
14 here. I'm trying to ask my questions and
15 instead I'm getting speeches from defense
16 counsel.

17 MR. FITZPATRICK: And this is a
18 deposition that's been going on for how long?
19 How much time did you spend talking about
20 totally irrelevant subjects? Now, fine, I'll
21 shut up. Please conclude this deposition,
22 because it's not going any more than about half
23 an hour.

24 MR. WITTELS: Are you finished?

25 MR. FITZPATRICK: I'm not going

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2 to answer that.

3 Q. Does Novartis Corporation
4 prepare any deferred compensation plans for its
5 subsidiaries, including Novartis
6 Pharmaceuticals?

7 A. I don't know.

8 Q. What is deferred compensation?
9 Do you know? Do you know what a deferred
10 compensation plan is?

11 A. Yes, sir. Deferred compensation
12 is when compensation isn't paid immediately but
13 is to be paid in the future.

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14 Q. Does Novartis -- who at Novartis
15 Corp. has familiarity with the preparing of
16 deferred compensation plans?

17 A. Jim Robinson.

18 Q. So you're not aware of whether
19 Novartis Pharmaceuticals adopted any plans that
20 were prepared by Novartis Corporation with
21 respect to deferred compensation?

22 A. No, sir.

23 Q. Do you know, what is a
24 restoration plan?

25 A. The Novartis restoration plan in

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2 the pension and the 401K restores amounts to
3 employees that are not payable into a qualified
4 plan because they reached the qualified plan
5 limits. So the excess over the qualified plan
6 limits is funded back to the employee's
7 accounts in the restoration plan.

8 MR. WITTELS: Could you read
9 that back?

10 (Record read.)

11 Q. Do you know if Novartis
12 Corporation prepared restoration plans for
13 Novartis Pharmaceuticals Corporation?

14 A. I don't know.

15 Q. Who would know that?

16 A. Jim Robinson.

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17 Q. Are you aware of whether or not
18 Novartis Corporation prepared any disability
19 plans for Novartis Pharmaceutical?

20 A. No.

21 Q. Do you know if Novartis
22 Corporation prepares employee benefits plans
23 for its different subsidiaries or affiliate
24 companies?

25 A. No.

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2 Q. Is that something Jim Robinson,
3 again, would know?

4 A. I believe so.

5 Q. What functions does the human
6 resources department provide at Novartis
7 Corporation?

8 A. This isn't a billed function.
9 Mostly it's stewardship. I don't know the
10 details.

11 Q. Does Novartis -- strike that.

12 MR. WITTELS: Why don't we take
13 five minutes and I'll sort of probably wrap it
14 up in the next 20 minutes. All right?

15 MR. FITZPATRICK: Yeah.

16 (A recess was taken from 6:15 p.m.
17 to 6:25 p.m.)

18 Q. Does a representative of
19 Novartis Pharmaceuticals appear at all of the

20 Merkeson ASCII - 9-27-05
20 Novartis Corporation board meetings?
21 A. No.
22 Q. How often does Novartis
23 Pharmaceutical send someone to the Novartis
24 Corporation board meeting?
25 MR. WEXLER: Objection to form.

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2 MR. PACE: Objection to form.
3 Lack of foundation.
4 A. I actually don't know if the
5 Novartis Corporation as an investor asks their
6 subsidiaries to make reports on the results of
7 what's going on. They will attend the board
8 meetings at the request of the board.
9 Q. Do you know if Novartis
10 Pharmaceuticals has -- either its CEO or other
11 employees have appeared in Novartis Finance
12 board meetings?
13 A. They have not.
14 Q. And does Novartis
15 Pharmaceuticals send any representatives or
16 have any of its executives appeared at Novartis
17 Services for the meetings?
18 A. They have not.
19 Q. What reports has the CEO of
20 Novartis Pharmaceutical made to the board of
21 Novartis Corp.?
22 MR. WEXLER: Objection. Form.

23 Merkeson ASCII - 9-27-05
MR. PACE: Objection to form.

24 Lacks foundation.

25 A. I don't know.

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2 Q. Have you read the minutes of the
3 board of directors of Novartis Corp. before
4 today?

5 A. I have looked back at the
6 records of Novartis Corporation to find
7 officers and directors and read the minutes of
8 Novartis Finance Corporation and Novartis
9 Services.

10 Q. But not the Novartis Corp.
11 minutes?

12 A. Not every page.

13 Q. So you don't know what
14 particular issues the CEO, Paulo Costa, would
15 have reported to Novartis Corporation at board
16 meetings. Correct?

17 A. Only issues relating to Novartis
18 Corporation as an investor.

19 Q. You weren't at all these
20 meetings. Correct?

21 A. I've been at none of the
22 meetings.

23 Q. None of the Novartis Corp.
24 meetings?

25 A. Not one since 1997.

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2 MR. WITTELS: Let me just mark
3 as the next number, the "Novartis Corporation
4 Meeting of the Board of Directors" from March
5 '04; June, 23, '04; November '04, Bates stamped
6 NCORP 1567 to 1583. And March 16th, '05.
7 Sorry. Four dates.

8 MR. PACE: Just for the record,
9 they weren't produced as one document, and
10 you're treating them for purposes of this
11 deposition as one document, but that's fine.

12 (Plaintiffs' Merkeson Exhibit 16:
13 Marked for identification.)

14 Q. Now, did you review these
15 minutes before today?

16 A. Yes, I did.

17 Q. Okay. Did you review an
18 unredacted copy of these minutes?

19 A. Yes, I did.

20 Q. And what was contained in the
21 redactions on 1568, 1569 and 1570?

22 A. I don't know.

23 Q. Well, what is -- what
24 information is reported in the board of
25 directors' meeting minutes?

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2 A. I didn't take the minutes and I
3 don't recall having looked at volumes of stuff.
4 I don't recall specifically.

5 Q. Do you have any recollection as
6 to any of the information that was provided in
7 any of the redacted sections of these minutes?

8 MR. FITZPATRICK: We have an
9 agreement as to what to provide, and they are
10 to provide the minutes redacted in the form
11 they are. So I don't know --

12 MR. WITTELS: Is this
13 confidential though for some reason, this
14 information?

15 MR. FITZPATRICK: Any of it is
16 going to be confidential, yes.

17 MR. WITTELS: I'm asking, the
18 information that's redacted, is there
19 attorney/client privilege on it?

20 MR. FITZPATRICK: I'm not going
21 to get -- we've already cut a deal with Lisa --

22 MR. WITTELS: I'm not sure.

23 MR. FITZPATRICK: I am.

24 Q. What reports were received from
25 Mr. Costa on Novartis -- on Novartis

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2 Pharmaceuticals, including oncology and
3 ophthalmology?

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4 A. I would like to recouse that we
5 are an investor in a variety of companies, and
6 what we get from them, as they said here, is a
7 report on results of operations, performance of
8 their companies, key issues and initiatives
9 they do. The rest of our meetings, which they
10 may not even be attending -- they may be asked
11 to leave, because they come at the invitation
12 of the board. Well, also at the board meeting,
13 for example, we might talk about corporate
14 compliance and compliance issues. We might
15 talk about training. We might talk about
16 acquisitions if the company is considering
17 them. We might talk about other things that
18 have nothing whatsoever to do with Novartis
19 Pharmaceuticals Corporation. And these people,
20 once they report on their operations, generally
21 leave; they're not even at the meeting.

22 So I -- I am not surprised that
23 there's lot of redaction, because the types of
24 thing that would be here in the minutes would
25 reflect, for example, if we are -- if we

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2 entered into a lease somewhere, you know, not
3 at Pharmaceuticals, but at somewhere else.

4 Q. Let me just interrupt you just
5 to try to cut it short.

6 A. Yeah.

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7 Q. Are you talking about things you
8 know that were written in here, or are you just
9 speculating?

10 A. What I'm talking about in
11 2004 -- remember, I said I read the unredacted
12 minutes.

13 MR. FITZPATRICK: But I don't
14 know what you're talking about, "the unredacted
15 minutes." Okay? We have an agreement with
16 counsel --

17 THE WITNESS: Okay, okay.

18 Q. Were the reports -- was there
19 information in the minutes about reports that
20 Mr. Costa gave on Novartis Pharmaceuticals,
21 including oncology and ophthalmology?

22 A. Definitely not.

23 Q. Do you know whether Mr. Costa
24 reported to Novartis Corp. any information
25 about hiring, promotion, EEOC, employees that

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2 he had, or you don't know?

3 A. Clearly not.

4 Q. Do you know whether he talked
5 about those issues?

6 A. I know they're not in the
7 minutes and I know they were not in the
8 minutes.

9 Q. Was -- any information about
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10 employees, employment statistics, payroll or
11 different staffing for different issues, was
12 that ever reported by Mr. Costa to anyone at
13 Novartis Corp.?

14 A. That would not be of the nature
15 of something that would be reported in the
16 operations as an investor. Remember, these are
17 very large companies.

18 MR. FITZPATRICK: He just asked
19 you -- please.

20 THE WITNESS: Sorry.

21 MR. FITZPATRICK: Listen to his
22 question and just answer that question. Okay?

23 THE WITNESS: Sorry.

24 Q. Do you know what role, if any,
25 any of the board members at Novartis

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1 Wayne Merkeson - Confidential
2 Pharmaceuticals, Mr. Ebeling, Barnett, Breu or
3 Naegelin, played in terms of hiring and
4 employment decisions at Novartis
5 Pharmaceuticals?

6 A. At the Novartis Corporation?

7 Q. No. I'm asking what role the
8 board members, Ebeling, Barnett, Breu and
9 Naegelin, played in terms of employment
10 decisions at Novartis Pharmaceuticals. If you
11 know.

12 A. There's only one executive at
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13 Novartis Pharmaceuticals Corporation the board
14 has, and that's their direct report. That
15 would be the CEO job. Those four people that
16 you mentioned would be involved, for example,
17 in selecting the CEO, next CEO from the COO
18 job; that would be their role.

19 Q. Do you know if they make any
20 other decisions, employment-related decisions?

21 A. That would not need to go to the
22 board and I do not believe it went to the
23 board.

24 Q. What accounting company or
25 accountants does Novartis Pharmaceutical use?

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2 A. The Novartis U.S. group has had
3 external auditors. Is that the question you're
4 asking?

5 Q. Yes. Which external auditors?

6 A. PricewaterhouseCoopers.

7 Q. And that is for Novartis Corp.,
8 Novartis Services and Novartis Finance?

9 A. Yes.

10 Q. And which external auditors does
11 Novartis Pharmaceuticals use?

12 A. All the U.S. group companies use
13 PricewaterhouseCoopers.

14 Q. So they have access to all the
15 financials of all the U.S. companies that are

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16 under the Novartis Corporation rubric.

17 Correct?

18 MR. FITZPATRICK: Objection as
19 to form.

20 A. I don't know.

21 Q. Does Pricewaterhouse prepare
22 separate financial statements for Novartis
23 Pharmaceuticals?

24 A. No.

25 Q. Do they prepare any type of

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2 financial reporting that is then utilized by
3 Novartis Corporation?

4 A. No.

5 Q. What does Pricewaterhouse do in
6 terms of auditing for Novartis Pharmaceuticals?

7 A. Auditors don't prepare financial
8 statements. They review them and they express
9 their opinion as to their accuracy; that's what
10 they do.

11 Q. So of the financial statements
12 that were prepared, obviously -- okay, prepared
13 by Novartis Pharmaceuticals and were reviewed
14 by Pricewaterhouse, which financial statements
15 did Pricewaterhouse review of Novartis
16 Pharmaceuticals on a yearly basis?

17 A. I don't know.

18 Q. What financials are provided by
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19 Novartis Pharmaceuticals to Novartis
20 Corporation, Novartis Services or Novartis
21 Finance on an ongoing basis?
22 A. None.
23 Q. Well, don't they provide tax
24 information? Isn't that considered financial?
25 A. No. A pro forma federal income

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2 tax return is not a financial statement. It's
3 a tax return.
4 Q. So is there any financial
5 reporting that is any financial report -- let
6 me rephrase that.
7 Are there any financial reports
8 that are prepared by Pharmaceutical that are
9 sent, distributed, disseminated to Novartis
10 Corp., Novartis Services or Novartis Finance?
11 A. That are ultimately disseminated
12 to Novartis Corporation or Novartis Finance or
13 Novartis Services?
14 Q. Right.
15 A. Yes.
16 Q. And what are the names of those
17 reports?
18 A. I can't recall the internal
19 numbering system, but they are in the nature of
20 general ledger and book internal -- excuse
21 me -- international accounting system books and

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22 records. I don't remember the names.
23 Q. Is there a list somewhere that
24 would describe those reports that Novartis
25 Pharmaceutical provides to Novartis Corp.?

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2 A. No.
3 Q. And who --
4 MR. FITZPATRICK: Wait a minute.
5 Hold on. Hold on.
6 (Witness and counsel conferring.)
7 MR. FITZPATRICK: Okay.
8 Q. All right. After talking to
9 counsel, do you want to change or clarify your
10 answer at all?
11 A. I'd like to explain Novartis AG
12 is a publicly-traded company, its stock is
13 publicly traded. The companies are requested
14 to report under international accounting
15 standards. Those standards have certain
16 standardized reports which are requested by
17 Novartis AG financial department to people to
18 report. In fact people at Pharmaceuticals
19 prepare whatever these reports are -- I don't
20 know what they are -- prepare them and submit
21 them.
22 Because they're an independent
23 company, they submit them up to Novartis AG and
24 to that finance department. Novartis AG in

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25 turn shares some reports -- not all -- some

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2 reports to Novartis Corporation, so some data
3 becomes available to Novartis Corporation from
4 Novartis AG. So -- and to answer your
5 question, because you asked if they submit them
6 to Novartis Corp. and all that, the answer is
7 no, they don't, because they submit them to AG.

8 But you then asked, does
9 Novartis Corp. get those reports, and the
10 answer is -- or do you obtain that information.
11 And the answer is yes, we obtain it, but we get
12 it from Novartis AG. There is no consolidation
13 in the United States of financial reporting.
14 Each company -- and they report in a general
15 ledger mechanism, not what you and I would look
16 at if we looked at a publicly-traded
17 shareholder report. We don't have those types
18 of reports, they don't get issued, so there's
19 nothing that looks like something people see in
20 the United States.

21 For example, when I look at the
22 Merck annual report, we don't produce those,
23 because, first of all, international accounting
24 standards don't require, don't have those
25 systems, and secondly, they're not needed for

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2 anybody in the United States. So we don't have
3 them.

4 Q. Does Novartis Corp. make any or
5 assist Novartis Pharmaceuticals in any
6 decisions relating to marketing?

7 A. No.

8 Q. Do any of the Novartis group
9 companies assist Novartis Pharmaceuticals with
10 respect to marketing decisions?

11 A. No.

12 Q. Other than the -- do the
13 Novartis companies, Services, Finance, or
14 Corp., receive reports from Novartis
15 Pharmaceuticals about their sales and
16 operations on an ongoing basis?

17 A. No. We prepare a form BE-13 for
18 the Department of Commerce where we must report
19 sales by NAICS codes -- don't ask me what NAICS
20 stands for; I don't remember offhand -- and
21 whatever that classification code system is
22 that must be reported to the Department of
23 Labor. We ask for that data from each of our
24 corporations. We compile the data in our
25 accounting department in Novartis Finance

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2 Corporation in New York and then submit that to
3 the U.S. Department of Commerce. I believe
4 that's done once or twice a year.

5 Q. And what information do you get
6 from Novartis Pharmaceuticals in order to
7 prepare your BE-13?

8 A. I think things like -- I know
9 things like sales data, number of employees.

10 Q. What departments at
11 Pharmaceuticals provides that to you?

12 A. The finance department provides
13 the data.

14 Q. To who? To you?

15 A. No. To the -- to someone who
16 works for Thomas Luscher in accounting.

17 Q. What is the e-mail address of
18 people who are at Novartis Corp. in finances or
19 services? Not your e-mail address in
20 particular, but is it a dot something? Is
21 it --

22 A. You mean dot com?

23 Q. Yes. Merkeson at something?

24 A. At novartis.com.

25 Q. So your address is -- I mean,

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1 I'm not going to e-mail you, but what would
2 your address be?

3 A. Wayne.merkeson@at novartis.com.

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5 Q. And what would Paul o's e-mail
6 address be?

7 A. I apologize. I don't know.

8 Q. Would it be also -- Novartis
9 Pharmaceutical employees, did they also have
10 the novartis.com?

11 A. Today? There are people who
12 know better than I. I'm not sure. They used
13 to be pharma.novartis.com, but maybe now it's
14 novartis.com.

15 Q. So as far as you know, it's
16 uniform, the use of the e-mails?

17 A. I don't know.

18 MR. WITTELS: That's it for now.
19 Thanks.

20 MR. PACE: We have one thing on
21 the record. I understand we're near finally
22 finalizing the protective order in this case,
23 and pursuant to that protective order and the
24 understanding between counsel, until we sign
25 it, this transcript is designated as

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2 confidential under that protective order by
3 Novartis Corporation.
4 (Time noted: 6:49 p.m.)
5
6
7

8 Merkeson ASCII - 9-27-05
 9
 10 _____
 11 WAYNE P. MERKELSON, ESQ.
 12
 13 Subscribed and sworn to
 14 before me this day
 15 of 2005.
 16 _____
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 24
 25

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2 C E R T I F I C A T E

3 STATE OF NEW YORK) ss

4 COUNTY OF NEW YORK)

5 I, KATHLEEN A. KEEFE, a Notary Public

6 within and for the State of New York,

7 do hereby certify:

8 That WAYNE P. MERKELSON, the

9 witness whose deposition is hereinbefore

10 set forth, was duly sworn by me and that

11 such deposition is a true record of the

12 testimony given by such witness.

13 I further certify that I am not

14 related to any of the parties to this

15 action by blood or marriage, and that

16 I am in no way interested in the outcome

17 of this matter. Merkeson ASCII - 9-27-05
18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 3rd day of October, 2005.

20 _____
21 KATHLEEN KEEFE

22
23
24
25

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2 E R R A T A
3 I wish to make the following changes, for the
4 following reasons:

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